

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 15
July 8, 2013
UNOFFICIAL DRAFT - 07/08/13 Afternoon Session

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VOLUME XV

UNITED STATES

VS.

MANNING, Bradley, E., PFC

COURT MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-entitled matter was continued on Monday, July 8, 2013, at 1:45 p.m., at Fort Meade, Maryland, before the Honorable Colonel Denise Lind, Judge.

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1 **APPEARANCES:**

2
3 **ON BEHALF OF GOVERNMENT:**

4 **MAJOR ASHDEN FEIN**

5 **CAPTAIN JOSEPH MORROW**

6 **CAPTAIN ANGEL OVERGAARD**

7 **CAPTAIN HUNTER WHYTE**

8 **CAPTAIN ALEXANDER von ELTEN**

9
10 **ON BEHALF OF ACCUSED:**

11 **DAVID COOMBS**

12 **CAPTAIN JOSHUA TOOMAN**

13 **MAJOR THOMAS HURLEY**

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1 PROCEEDINGS

2 THE COURT: Be seated. Court is called to
3 order.

4 Major Fein, please account for the parties.

5 MR. FEIN: Your Honor, all parties in court
6 last recessed are again present with the exception of
7 Captain Overgaard is absent and Captain Whyte is
8 present.

9 THE COURT: Anything we need to address
10 before we continue?

11 MR. FEIN: No, ma'am.

12 THE COURT: Defense?

13 MR. COOMBS: Yes, Your Honor. The defense
14 calls sergeant David Sadtler to the stand.
15 Whereupon,

16 DAVID SADTLER,
17 called as a witness, having been first duly sworn to
18 tell the truth, the whole truth, and nothing but the
19 truth, was examined and testified as follows:

20 DIRECT EXAMINATION BY MR. COOMBS:

21 Q For the record, you're Sergeant David

1 Sadtler?

2 A Yes, sir.

3 Q Sergeant Sadtler, were you deployed to Iraq
4 in the 2009, 2010 timeframe?

5 A Yes, sir.

6 Q What unit were you deployed with?

7 A 210th Mountain Special Brigade. Special
8 Retreats Battalion.

9 Q Do you know PFC Manning?

10 A Yes, sir.

11 Q How do you know him?

12 A He was, he was in the brigade element. I
13 was in the battalion element of the MI section.

14 Q How often did you have interaction with PFC
15 Manning?

16 A During work functions and shift change.

17 Q During those time periods, during any of
18 the work functions or shift changes, did you ever have
19 conversations with PFC Manning?

20 A On a few occasions; yes, sir.

21 Q I want to ask you a few questions about PFC

1 Manning's knowledge on certain software packages for
2 the D6-A computer. Okay?

3 A Roger, sir.

4 Q With regards to your interaction with him,
5 did you come to know whether or not he had any
6 knowledge with regards to software packages?

7 A Yes, sir.

8 Q And how did you come into that knowledge?

9 A He was one of the, what I would call the
10 better analysts in the section.

11 Q Why do you say that?

12 A He focused his knowledge onto learning a
13 software and he really, he honed his abilities in
14 knowing the software and knowing the job.

15 Q What type of software was he knowledgeable
16 on?

17 A ArcGis and I'm not sure which other, which
18 other software he was using. But ArcGis was a large
19 part of our job.

20 Q What did you use in general, what did you
21 use ArcGIS for?

1 A We used ArcGIS to plot events onto a map
2 and that would be exported to either Google Earth or
3 put into a PowerPoint.

4 Q Did PFC Manning ever help you with any of
5 the software?

6 A He had helped someone else in the section
7 while I was there so I learned a little bit as he was
8 showing us how to accomplish the task.

9 Q And do you recall what software package he
10 was helping the other person on?

11 A That was ArcGis, sir.

12 Q During your conversations with PFC Manning,
13 did you ever have a conversation about setting up a
14 hash table software?

15 A He had brought me to the side to have what
16 seemed to be a private conversation and he fielded the
17 idea to me that he wanted to generate hash tables on a
18 computer and market that in some fashion.

19 Q What are hash tables?

20 A Hash tables are mathematical calculations
21 of passwords that are supposed to be in a one-way

1 fashion so that you can't reverse that sequence into
2 the original password thereby securing that password
3 from release.

4 Q And the idea that PFC Manning was talking
5 to you about, from what you heard, did you believe that
6 was a marketable idea?

7 A It had already been accomplished in the
8 open source world. Or it was generally already known
9 to exist. So for reimplementing it, it didn't make
10 sense to me.

11 Q Now, from your position, what job did you
12 have when you were deployed?

13 A I was a member of the team in the talk and
14 we monitored events at the other battalion levels so if
15 there was a IED or a convoy, we would make sure that
16 that convey was looked after by assets.

17 Q Do you have computer knowledge yourself?

18 A Yes, sir.

19 Q What, can you explain to the court kind of
20 the level of your computer knowledge?

21 A I spent my teenage years reading and

1 studying on computer, computer related technology. I
2 was in the computer club in high school just as a
3 hobbyist.

4 Q Do you know how to program?

5 A I did know basically programming a few
6 years ago but I haven't done anything recently so I'm
7 no longer considering myself a programmer.

8 Q All right. With regards to, I guess, other
9 than marketing this kind of hash table software, was
10 there any other conversation on what PFC Manning was
11 planning to use the program for, if anything?

12 A No, sir.

13 Q Based upon your interaction with PFC
14 Manning, would you describe him as somebody who was
15 knowledgeable on worldly events?

16 A Yes, sir.

17 Q Why would you say that?

18 A He had told me that he was up-to-date on
19 worldly events and that the staff in the brigade would
20 come to him if they needed to know information about
21 what was going on in the world.

1 Q Do you know whether or not he read open
2 source information?

3 A Yes, sir. I believe that's what he was
4 trying to express to me.

5 Q Do you recall an incident where PFC Manning
6 brought to you a concern regarding Iraqis being
7 arrested by the Iraqi National Force?

8 A Yes, sir.

9 Q And when was this?

10 A This was sometime after, I'm not sure exact
11 dates but sometime after I arrived in Iraq.

12 Q When did you arrive in Iraq?

13 A Again, it was I believe December of 2009
14 but I do not have a good recollection of when it was.

15 Q What sort of documentation did PFC Manning
16 show you?

17 A He showed me a translated copy of a report,
18 I believe.

19 Q Do you recall what that report dealt with?

20 A I don't have the -- I don't remember the
21 exact contents but it was something to the effect of

1 Iraqi nationals had arrested a group of Iraqis or
2 Moroccans printing anti-Iraq government propaganda.

3 Q Do you know why PFC Manning was showing you
4 this information?

5 A He seemed to be concerned over the event.

6 Q Why do you say that?

7 A He brought it to me in a way that he was
8 concerned that this was happening.

9 Q Do you know if PFC Manning showed this
10 material to anyone else?

11 A I believe he showed it to his co-workers,
12 but I was not in the, I was not in his section when he
13 did so.

14 Q After PFC Manning showed you the
15 documentation that he had, what did you do?

16 A After he showed me documentation, I read it
17 and I dropped, I dropped the idea. I didn't follow up
18 on it or anything.

19 Q Did PFC Manning ask you to follow-up on
20 anything?

21 A No.

1 Q And based upon when you say, I dropped the
2 idea, what was PFC Manning's response to you when he
3 showed you this stuff?

4 MR. FEIN: Objection, Your Honor. Hearsay.

5 THE COURT: The witness' response or
6 reaction?

7 MR. COOMBS: I'll go with reaction, Your
8 Honor.

9 THE COURT: Sustained on the response.

10 A Could you repeat the question?

11 Q Yeah. Based upon what he showed to you,
12 what was his reaction when you said, I basically kind
13 of dropped the issue?

14 A I dropped the issue after, when he brought
15 it up to me I had told him or I had expressed to him
16 that it was just what happens because we're not in the
17 United States so different countries have different
18 laws and different rights.

19 He didn't -- I don't remember anything
20 remarkable happening after, after that. As far as a
21 reaction.

1 Q Without saying anything that he might have
2 said to you, did you see any sort of physical reaction
3 by PFC Manning?

4 A The only thing that I saw from him at the
5 time that I can recall was that he was upset over the
6 situation.

7 Q Did PFC Manning ever come to you to
8 complain about his belief that no one in his unit
9 seemed to care about the mission?

10 A He might have, sir.

11 Q Do you recall that or not?

12 A Not, not at this time, sir.

13 Q Do you recall ever saying something along
14 those lines in a sworn statement?

15 A I might have, sir. But to recall it
16 accurately I, I can only say that there was, he had a
17 deep belief in news and what was going on. Whereas
18 other people were more concerned about just going
19 throughout their day.

20 MR. COOMBS: Thank you, Sergeant Sadtler.
21 I have no further questions.

1 THE COURT: Cross?

2 MR. FEIN: Can I have a moment, Your Honor?

3 THE COURT: Yes.

4 CROSS-EXAMINATION BY MR. FEIN:

5 Q Sergeant Sadtler, you're a signals
6 intelligence analyst?

7 A Yes.

8 Q How does that differ in an unclassified
9 manner from all-source intelligence analyst?

10 A All-source deals with all forms of
11 intelligence. Signals analyst deals specifically with
12 signals.

13 Q Prior to arriving at 210 Mountain, did you
14 ever use a distributed common ground system Army
15 station D6-A workstation?

16 A No, sir.

17 Q Do you recollect today why you actually
18 never used one?

19 A Yes, sir.

20 Q Why would you not have used one?

21 A D6-A is a system used by all-source

1 analysts, sir.

2 Q What network did you typically work on as a
3 signals intelligence, I'm sorry, not the network. Let
4 me back up and rephrase this.

5 Was the network you were on a higher
6 classification than SIPR, as a signals intelligence
7 analyst?

8 A It was higher than SIPRNET, sir.

9 Q But when you were deployed, you weren't
10 actually working in a signals intelligence analyst
11 capacity, correct?

12 A Correct.

13 Q You were working on the talk floor?

14 A Yes, sir.

15 Q And you would go back and see PFC Manning
16 in the S2 section?

17 A Yes, sir.

18 Q Or he would come out and see you on the
19 talk floor?

20 A Yes, sir.

21 Q But to the best of your memory today, you

1 never worked on a D6-A computer ever?

2 A No, sir.

3 Q Also, when you did observe PFC Manning
4 working on his computers, did you observe him locking
5 his computer?

6 A Yes, sir.

7 Q Did he lock it a lot?

8 A Yes, sir.

9 Q What do you mean by locking?

10 A He locked the screen as though you were to
11 leave the workstation unattended.

12 Q Did you see that, so when you saw him lock
13 it, did he leave the computer station unattended?

14 A Not necessarily, no, sir.

15 Q And was that the normal practice of those
16 in the S2 section?

17 A No, sir.

18 MR. COOMBS: Your Honor, with regards to
19 the last answer, I would object as to this witness'
20 ability to testify to the normal practice of the rest
21 of the people in the T-SCIF. He worked in the talk

1 floor, which is a totally separate section.

2 THE COURT: All right.

3 Do you want to develop that a little bit
4 more?

5 MR. FEIN: Absolutely, Your Honor.

6 BY MR. FEIN:

7 Q When you worked in the talk, did you
8 personally observe individuals while they were still
9 sitting at their computer locking their computer when
10 another individual would lock up?

11 A No, sir.

12 Q Did you observe anyone ever doing that?

13 A No, sir.

14 Q In the talk?

15 A No, sir.

16 Q When you visited the T-SCIF, did you ever
17 observe anyone doing that other than PFC Manning?

18 A No, sir.

19 MR. FEIN: No further questions, Your
20 Honor.

21 THE COURT: Redirect?

1 MR. COOMBS: Nothing, Your Honor.

2 THE COURT: Sergeant Sadtler, I just have a
3 couple of questions for you.

4 EXAMINATION BY THE COURT:

5 Q What was the date that you arrived in Iraq?

6 A I'm not sure on that date, ma'am.

7 Q Was it before or after Christmas?

8 A I couldn't tell you for certain but I
9 believe it was around Christmas. They had Christmas
10 decorations and presents under a tree still.

11 Q So would you say Christmas was coming or
12 had passed?

13 A I'm not sure, ma'am.

14 Q Okay.

15 How soon after your arrival did this
16 conversation with PFC Manning take place?

17 A I do not know, ma'am.

18 Q Was it a long time or a short time?

19 A I believe I spent roughly two weeks before
20 I transitioned into working and then it would have been
21 about another week before I moved into the talk

1 permanently. So it would have been close to a month
2 before I could have really talked to him. But I don't
3 have a accurate date for you, ma'am.

4 Q So just to make sure I understand this, did
5 you arrive in Iraq around Christmas and need two weeks,
6 I guess, before you started working, and then another
7 week in the talk? Or did you arrive earlier than that
8 and start working around Christmas?

9 A I arrived in December or January. I'm not
10 sure of exactly when it was, ma'am. I didn't keep
11 track of it.

12 THE COURT: Okay. Any follow-up based on
13 that?

14 MR. COOMBS: No, Your Honor.

15 MR. FEIN: No, ma'am.

16 THE COURT: Temporary or permanent excusal?

17 MR. COOMBS: Permanent.

18 THE COURT: Do you agree?

19 MR. FEIN: Yes, ma'am.

20 THE COURT: Sergeant Sadtler, you're
21 permanently excused. You're free to go or you can stay

1 here in the courtroom.

2 THE WITNESS: Thank you, ma'am.

3 MR. COOMBS: Your Honor, the defense calls
4 Captain Steven Lim to the stand.

5 Whereupon,

6 CAPTAIN STEVEN LIM,
7 called as a witness, having been first duly sworn to
8 tell the truth, the whole truth, and nothing but the
9 truth, was examined and testified as follows:

10 MR. WHYTE: You are Captain Steven Lim?

11 THE WITNESS: That's correct.

12 DIRECTION EXAMINATION BY MR. COOMBS:

13 Q Captain Lim, I want to first start off by
14 asking you a few questions about PFC Manning's
15 experience level, okay?

16 A Yes, sir.

17 Q Was PFC Manning one of the soldiers that
18 worked underneath you?

19 A Yes, sir; he was.

20 Q And my understanding was that a period of
21 time he became the (INAUDIBLE) S2 in the brigade?

1 A Yes, sir.

2 Q Do you know whether Ft. Drum was PFC
3 Manning's first duty assignment?

4 A Not for sure, sir, I believe it was.

5 Q Do you know how many years PFC Manning was
6 in the Army prior to the time of the deployment?

7 A Not exactly. A couple years, I assume.

8 Q And why do you assume that?

9 A I mean, he came in to -- as I private first
10 class and normally that's just a young soldier coming
11 into the military so just based on that right there.

12 Q And in your estimation was PFC Manning a
13 junior analyst?

14 A Yes, sir. Junior analyst.

15 Q Why would you say that?

16 A Usually it's based on rank and experience.

17 Q And as a junior analyst, was conducting
18 analysis one of PFC Manning's strengths?

19 A Yes, sir.

20 Q Why do you say that?

21 A He was very good with data mining, doing

1 statistical analysis, trends analysis, stuff like that.

2 Q And what about putting together a
3 collaborative picture of all the information for a
4 commander, was PFC Manning good at that?

5 A I'd say he was average.

6 Q Why do you say he was average?

7 A Sometimes that comes with experience.
8 Learning how to take every piece of the puzzle and
9 putting it actually together. Sometimes that just
10 comes with experience over time.

11 Q In your estimation, was PFC Manning an
12 experienced analyst?

13 A No, sir.

14 Q Was he still learning?

15 A Yes, he was.

16 Q Now, even though he was not an experienced
17 analyst at this point did he have other strengths?

18 A Are you talking about as an analyst?

19 Q Yeah, as an analyst or an S2?

20 A Outside of the statistical analysis and the
21 charts, he was pretty good with using computers.

1 Q What was his strengths with using
2 computers?

3 A He could manipulate some of the database in
4 the D6 better than other analysts in the section.

5 Q And when you say manipulate the data, how
6 so?

7 A It was a little bit complicated to use.
8 Some commands were not easy to memorize and to pull
9 certain statistical data off of spreadsheets and put
10 them into charts and graphs. Not everyone knew how to
11 do that initially.

12 Q Did PFC Manning understand how to use the
13 programs within the D6-A computer?

14 A Yes, sir, I believe so.

15 Q Why do you believe that?

16 A Because he was the one that we turned to
17 for the statistical analysis and geo-plotted to the map
18 primarily.

19 Q When you say you turned to him, what were
20 you asking him to do?

21 A Take certain -- whatever the requirement

1 was. Take certain patterns or trends, come up with
2 some sort of predictive analysis based off that and be
3 able to portray that on a map slide.

4 Q And when you tasked him to do that, was PFC
5 Manning able to complete those tasks in a timely
6 manner?

7 A Yes, most of the time, sir, yes.

8 Q Now, I want to ask you a few questions
9 about how you used PFC Manning to create those
10 products.

11 If you had a product to complete, would you
12 assign it to a team leader?

13 A Yes, I would.

14 Q And who were the team leaders in the S23
15 section?

16 A It was Staff Sergeant Balonek (phonetic)
17 and Lieutenant Fields to start out.

18 Q And just with assignment of team leader,
19 without using an exact example, could you tell the
20 court how you might do that? Give an assignment to a
21 team leader?

1 A Yes. Give basic guidance to the team
2 leader on how you would like something done, the end
3 state. It's their task to delegate, further delegate
4 and delineate the effort of work on their section to
5 complete the assignment.

6 Q So I guess after you assigned to it a team
7 leader, would it be typical for a team leader to then
8 assign it to a junior analyst like PFC Manning?

9 A Yes.

10 Q What aspects would they normally assign to
11 a soldier like PFC Manning?

12 A It, depending on the soldier's experience,
13 it could be a multitude of things from researching a
14 certain individual's name to going back and looking up
15 historic events for certain areas in the battle space.
16 It's a wide range of tasks.

17 Q Would creating graphs and charts be
18 something that a junior analyst might be tasked to do?

19 A Yes, sir.

20 Q And how would you use those graphs and
21 charts?

1 A We would use them for trend analysis to
2 see, you know, if certain attacks happened at certain
3 times of the day or at certain days of the week, months
4 out of the year. So we could better predict, have a
5 predictive analysis on what we would or would not do or
6 what the enemy would or would not do.

7 Q Would you ever do any sort of quality
8 assurance and quality control on a product after
9 assigning it to a team leader?

10 A Yes, I would, sir.

11 Q How so?

12 A Normally when it's completed, it would be
13 given to myself after it went through a multiple chain
14 of QAQC for a better lack of term. And I would always
15 review before, especially if it was a product I was
16 going to brief to the commander, to make sure I knew
17 the material and two, it was exactly what we were
18 looking for.

19 Q I guess once the junior analyst completed
20 their work and it was reviewed by the team leader and
21 reviewed by you, did there come a time where you had to

1 go back to the team leader or junior analyst to tell
2 him to tweak the product in some way?

3 A Yes, yes.

4 Q And why would you do that?

5 A Maybe there was a small piece of
6 information that was missing or maybe something that
7 the analyst forgot to put in there. Or I just thought
8 of something, hey, maybe we should add this real quick
9 at the end. Those are some good examples.

10 Q Did you ever have to back to PFC Manning to
11 give him guidance on what needed to be done?

12 A I think I did once or twice; yes, sir.

13 Q Why would that be?

14 A Probably due to time constraint. Probably
15 a meeting coming up, just quick turnaround.

16 Q Did PFC Manning ever miss anything from an
17 assignment that you gave him?

18 A There was a few times, yes, sir.

19 Q And did it surprise you that PFC Manning
20 might miss a task or at least understanding the focus
21 of a task?

1 A No. It wouldn't surprise me.

2 Q Why not?

3 A Because like I said before, he was a junior
4 analyst and sometimes those things happen.

5 Q Were there times where it took PFC Manning
6 longer to complete a project that you assigned him?

7 A Yes.

8 Q Why was that?

9 A Sometimes in his case maybe he was assigned
10 a task and he didn't know where -- he thought he meant
11 (INAUDIBLE), and he didn't. And he didn't go any
12 further. He just stopped. So he had to receive
13 guidance the following day and complete it the next
14 shift.

15 Q Was it surprising to you that he might not
16 completely understand a project and just stop?

17 A No.

18 Q And again, why was that?

19 A It's, with a junior soldier, that's to be
20 expected sometimes.

21 Q Prior to the deployment to Iraq, did PFC

1 Manning get a lot of chances to do analytical work at
2 Garrison?

3 A The only experience I know is at JRTC. I
4 can't speak for the rest of the time. I wasn't part of
5 the predeployment phase.

6 Q From your experience is a job of a junior
7 analyst in Garrison different from that same job in a
8 deployed environment?

9 A Yes, to a point it is, yes.

10 Q Can you explain how so?

11 A Yes, at Garrison we have other duties to do
12 as intelligence personnel. We have security functions
13 dealing with security clearances, physical security
14 inspection and sometimes, unless you're ramping up for
15 deployment, there isn't a whole lot of opportunity to
16 get on classified networks to kind of become better at
17 your job. There's opportunities but it all depends on
18 the unit's mission at the time of how often a soldier
19 gets to get on -- practice those skills.

20 Q And then I guess in deployed environment,
21 how has that changed?

1 A Usually the -- your sole focus is the
2 intelligence piece as opposed to the security piece,
3 because usually the security piece is in place.

4 Q So you would be working longer on the
5 SIPRNET?

6 A Much longer.

7 Q Now, I want to ask you a couple questions
8 about what PFC Manning did during the deployment when
9 he was not completing tasks for you.

10 A Okay.

11 Q What shift did PFC Manning primarily work
12 on?

13 A The night shift.

14 Q What threat group did he work on?

15 A The Shia Threat Group.

16 Q As a Shia Threat Group analyst, what did
17 PFC Manning primarily do on the night shift?

18 A Usually research topics that we came up
19 with during the day that we need to further investigate
20 or finishing products that were started during the day
21 and they weren't completed so they were completed at

1 night. Or overall (inaudible) on current targets that
2 we needed to get more information on.

3 Q Did he ever pull names in response to RFI,
4 request for information?

5 A Yes, sir; we all did.

6 Q What entailed in holding names in response
7 to an RFI?

8 A Sometimes a HUMINT would detain someone and
9 we would check the database to see if there was any
10 historical information on that person to see if it was
11 of value or if there was a warrant for their arrest.

12 Q Would that task primarily be assigned to
13 the night shift?

14 A Well, typically would be assigned to when
15 the event happens. Basically, as it happens it would
16 be assigned. So depending on what time of the day it
17 was would be depending on what time that information
18 happened.

19 Q Were there products that were being
20 completed by the night shift designed to give
21 commanders on battlefield real time information?

1 A Usually not. No, sir.

2 Q What were they, what were those products
3 used for?

4 A Like, planning for future operation, on
5 most cases.

6 Q Now, I want to ask a few questions about
7 how the T-SCIF was run.

8 A Yes, sir.

9 Q Did the brigade T-SCIF have an SOP?

10 A I don't know, sir.

11 Q I'm sorry?

12 A I don't know.

13 Q Do you recall saying that you, it did not
14 have an SOP?

15 A I don't, sir.

16 Q Would anything help refresh your memory?

17 A Yes, sir. My previous testimony would.

18 MR. COOMBS: I'll show the witness what's
19 been marked as Defense Exhibit Quebec for
20 identification.

21 BY MR. COOMBS:

1 Q Read question one to yourself silently and
2 your answer on page 2 and when you're done --

3 THE COURT: I'm sorry, that's Defense
4 Exhibit?

5 MR. COOMBS: Quebec, ma'am. I'm retrieving
6 Defense Exhibit Quebec for identification from the
7 witness.

8 BY MR. COOMBS:

9 Q Captain, does that refresh your memory on
10 whether or not the T-SCIF have an SOP?

11 A Yes, sir.

12 Q Did the T-SCIF have an SOP?

13 A No.

14 Q Do you know why the T-SCIF did not have an
15 SOP?

16 A I do not, sir.

17 Q Would an SOP let the soldiers know what the
18 proper procedures were within a T-SCIF?

19 A Yes, it would.

20 Q Would the SOP let the soldiers know what
21 they could and couldn't do within the T-SCIF?

1 A Yes, sir.

2 Q Do you know if analysts were allowed to
3 listen to music in the T-SCIF?

4 A Yes, they were.

5 Q How much music or where did the music come
6 from?

7 A Originally when we first arrived it was on
8 the shared drive and it was also on the (INAUDIBLE) as
9 well.

10 Q Do you know how much music was on the
11 shared drive?

12 A No, sir; I don't.

13 Q Were analysts allowed to play music on
14 their D6-A computers?

15 A Yes, they were.

16 Q Did anyone in the S2 section say that
17 listening to music on your D6-A computers was against
18 the user agreement?

19 A No, sir.

20 Q Were analysts allowed to bring in movies
21 into the T-SCIF?

1 A No, sir.

2 Q Why do you believe they weren't allowed to
3 bring in movies?

4 A It was just against the regulation.

5 Q So if an analyst brought in a CD with a
6 movie on it that they might have purchased as the S2
7 you would say that that's not permitted in the T-SCIF?

8 A That's correct.

9 Q If you saw that, what would you do?

10 A Make an on-the-spot correction.

11 Q Why would you not permit movies to be in
12 the T-SCIF?

13 A You just don't know if it's a -- maybe a
14 bootlegged disk or something. It might have a harmful
15 program or software on it.

16 Q Would bringing movies into the T-SCIF and
17 then playing them on your D6-A computer be against the
18 user agreement?

19 A I believe it would.

20 Q Why do you believe that?

21 A Just because it's against regulation.

1 Q Do you know what an executable file is?

2 A Yes, sir.

3 Q How do you know what an executable file is?

4 A Through personal experience of using them.

5 Q Can you tell the court what your personal
6 experience is?

7 A In college, I made them on the computer
8 using a video game. To save memory, you could drag
9 the -- you can insert the CD, click on the shortcut and
10 it would run the file from the CD as opposed to keeping
11 the program on the actual computer.

12 Q Do you know if analysts had mIRC chat as an
13 executable file on their D6-A computer?

14 A I don't know if it's executable or not.

15 Q Did you work off of a D6-A computer?

16 A I did, sir.

17 Q Did you have mIRC chat on your computer?

18 A I had mIRC chat on my computer.

19 Q Do you know if it was an executable file or
20 not?

21 A I do not.

1 Q Did anyone in the S2 section say that
2 running executable files as a shortcut from the desktop
3 of the computer was against the user agreement?

4 A No.

5 Q Did anyone in the S2 section say that
6 running an executable file from a CD in your D6-A
7 computer was permitted or not?

8 A No, no one ever said that, sir.

9 Q Do you know if that practice was being done
10 by soldiers?

11 A I don't know, sir.

12 Q Do you know if anyone said that you could
13 do that?

14 A No, I don't.

15 Q So I take it you, do you know whether or
16 not anyone ever said that using an executable file that
17 was not part of the baseline package for the D6-A was
18 against the user agreement?

19 A I don't know if that was ever said, sir.

20 Q I now want to ask you a few questions about
21 what an analyst could look at on the shared drive,

1 okay?

2 A Okay.

3 Q Were any of the files on the shared drive
4 encrypted?

5 A I don't know, sir.

6 Q Do you know if any of the files in the
7 shared drive was compartmentalized?

8 A Each section had their own.

9 Q So each section had their own files?

10 A Yes, usually they were categorized whatever
11 staff section you belonged to.

12 Q Do you know if others could go to a
13 different section to look?

14 A Yes, you could go anywhere.

15 Q Did anyone identify any sort of rules what
16 you could look at and not look at on the shared drive?

17 A No, sir.

18 Q Now let's talk about the SIPRNET. Was
19 everything on the SIPRNET classified secret and below?

20 A Yes, it was.

21 Q And other than information that might be

1 password protected, could an analyst access anything
2 that was on the SIPRNET?

3 A Yes, he could.

4 Q Do you know if your section conducted any
5 training on what an analyst could and could not view on
6 the SIPRNET?

7 A I do not.

8 Q Are you familiar with the term data mining?

9 A Yes, I am.

10 Q What is data mining?

11 A It's basically using all available tools
12 that you have at your disposal to do research.

13 Q Would you expect an analyst, a good analyst
14 to do data mining?

15 A Yes, sir.

16 Q Do you know if the S2 section posted any
17 rules or conducted any training on what type of
18 information you could and could not data mine on
19 SIPRNET?

20 A No, I don't.

21 Q Would you discourage an analyst from data

1 mining on SIPRNET?

2 A No, sir.

3 Q Why not?

4 A A lot of times that's how we find
5 information out on whatever topic we're looking for
6 through data mining.

7 Q Do analysts use the CIDNE Iraq database?

8 A Yes.

9 Q How often?

10 A Quite often. Almost every day.

11 Q How many different databases were within
12 the CIDNE database?

13 A There was quite a few. 10 to 20. I don't
14 know exactly. But there was quite a few.

15 Q And was one of those databases within the
16 CIDNE database the SIGACT database?

17 A Yes, it was.

18 Q How often did analysts use the SIGACT
19 database?

20 A It depends. Depending what the project
21 was. It could be once a day to couple times a week.

1 It all depends.

2 Q Did you ever use the SIGACT database?

3 A I did.

4 Q What did you use it for?

5 A Sometimes, you know, the commander needed
6 something right away and I was in my office, he came in
7 and I was just look it up real quick and get the
8 information and provide it to him.

9 Q Now, from your perspective, how would you
10 describe a SIGACT database?

11 A It's very large because it has the
12 historical repository of all the SIGACTS that ever
13 happened and that's multiple events, not just attacks.
14 It was very large. It took a lot of sorting through to
15 get to the information you actually need.

16 Q Would you describe it as a historical
17 document?

18 A Yes, sir.

19 Q Why would you describe it as a historical
20 document?

21 A Because all the SIGACTs in there were --

1 happened in the past.

2 Q How would analysts use the SIGACT database
3 with the products that they were using?

4 A They would look up maybe enemy activity in
5 a certain area for a certain period of time going
6 backwards, especially if we were going to go to a place
7 we haven't been for a long time. They would provide
8 us, here's everything that happened over the last 90
9 days in this small area. That's just one example.

10 Q And when you pull that information, would
11 you use that to establish trends and predictive
12 analysis?

13 A Yes, trends, predictive analysis or just
14 general intelligence preparation for the battlefield.
15 Defining our operational environment. What is this
16 area all about. Depending on the mission, it would
17 tailor the use.

18 Q Do SIGACTS contain the names of key sources
19 that are working with our government?

20 A Generally, no.

21 Q Why do you say generally no?

1 A There is a possibility that you may see one
2 in there on error of some sort.

3 Q So it would be an error to have it in
4 there?

5 A Possibly, yes.

6 Q How do we keep track of our key sources?

7 A They're usually tracked by a number.

8 Q Would the actual name ever, when you say
9 number, what type of database does that, is that held
10 in?

11 A In the human intelligence reports, when you
12 get the information, the source is given a number and
13 that's the number we would go off of to classify
14 sources.

15 Q So in human intelligence reports?

16 A Yes.

17 Q Do you have the actual name or number of
18 the person?

19 A Just the number.

20 Q With regard to SIGACTS, if you had a name
21 in a SIGACT, would that typically be one of our key

1 sources?

2 A It could potentially be.

3 Q But would that be, when you say
4 potentially, why would you say that?

5 A If, let's say one unit on the ground
6 arrested another unit's source inadvertently and didn't
7 know it and sometimes the detainees' names are put into
8 the SIGACT report and therefore a name of the source
9 would be in the SIGACT.

10 Q Now, the SIGACT reports that are done, who
11 completes them?

12 A Usually the battle captain at the battalion
13 level.

14 Q Where do they get that information?

15 A It's radioed up or whatever method they use
16 to communicate it up the chain to the squad or platoon
17 to the battalion level and that's where they input it
18 in the command post of the future.

19 Q Are the names that are within SIGACT
20 reports spelled phonetically or spelled by Arabic?

21 A They usually spell it phonetically.

1 Q Why do you say that?

2 A Sometimes soldiers don't have a full grasp
3 on how to spell the names in Arabic.

4 Q From your experience, are there different
5 ways to spell say, for example, Mohammad in the
6 SIGACTS?

7 A Yes, sir.

8 Q How many different ways?

9 A Many, sir. I don't have an exact number.
10 It's quite many different ways.

11 Q And do SIGACTS, when they do contain names,
12 do they generally contain the full Arabic name?

13 A It depends, sir, how much information the
14 detainee actually gave the unit on the ground. I can't
15 say one way or the other.

16 Q When SIGACTS are placed in the CIDNE
17 database are they automatically classified as secret?

18 A Yes, they are.

19 Q Why is that?

20 A Everything is done on a secret database and
21 then -- yeah, that's why, sir.

1 Q And do you know if there's ever a
2 declassification date for SIGACTS?

3 A I don't know what that is.

4 Q Have you ever seen a SIGACT be
5 declassified?

6 A No, sir.

7 Q Now, I want to ask you about the
8 Net-Centric Diplomacy database.

9 A Yes.

10 Q Do you know how analysts were informed of
11 their access to diplomatic cables?

12 A I do.

13 Q How is that?

14 A Through myself.

15 Q Tell the court what you did.

16 A I gave the link to all of my analysts to
17 kind of broaden their horizons and kind of get rid of
18 their tunnel vision of looking at just what the enemy
19 is doing on the ground. We need to take a step back
20 and look at the larger picture what was going on,
21 specifically with reconciliation in Iraq. We had a lot

1 of threat groups in our area that were involved in
2 reconciliation. Having a good understanding what's
3 going on with reconciliation could affect our battle
4 space and also changing the way we do products. And I
5 felt we weren't giving this information to my brigade
6 commander. So I wanted to give some guidance so they
7 could better inform the commander.

8 Q Where did you get the net-centric database?

9 A I received it from the higher headquarters.

10 Q When you received it, did they give you any
11 guidance on that?

12 A I don't remember, sir.

13 Q When you gave the link out to your
14 analysts, did you give them any guidance?

15 A I did.

16 Q What did you tell them?

17 A Just what I previously said. We need to
18 incorporate this into our products and try to redefine
19 our common operating picture with the brigade
20 commanders.

21 Q Did you ever, well, did you ever go there

1 and look at any of the diplomatic cables?

2 A I did a few times, yes.

3 Q Did the diplomatic cables and the diplomacy
4 database, did it have a password that you had to enter
5 in order --

6 A It did not, no, sir.

7 Q Was it available to anybody that had
8 SIPRNET access?

9 A Yes, it was.

10 Q When you went on the Net-Centric Diplomacy
11 Database, once you got there was there any sort of
12 banner or prohibition that was put up?

13 A Not to my knowledge, no.

14 Q Now, when you put out the guidance to the
15 analysts to go look at the Net-Centric, did you put out
16 any guidance to them on what they could and could not
17 look at?

18 A I did not.

19 Q Did you place any restrictions on the
20 analysts when it came to the Net-Centric Diplomacy?

21 A I did not.

1 Q Did you say, for example, only look at
2 cables that deal with Iraq?

3 A I did not, no.

4 Q Did anyone in the S2 section put out any
5 guidance or restrictions on what an analyst could and
6 could not download from the Net-Centric Diplomacy
7 Database?

8 A No, sir.

9 Q How about the manner in which you
10 downloaded information?

11 A No, sir.

12 Q Did you put out any guidance that said you
13 had to click open and save?

14 A No, sir.

15 Q Now, I want to ask you about open source
16 information, okay?

17 A Yes, sir.

18 Q Was it common for analysts to look at open
19 source information?

20 A It was.

21 Q Why would an analyst do that?

1 A Because all-source is in their job title so
2 every method of intelligence out there they have to use
3 in their product that's available to them.

4 Q Would you encourage analysts to look at
5 open source information?

6 A I would.

7 Q Why would you?

8 A Just like I previously stated, you have to
9 cover all of your bases in the intel world. You have
10 to look at -- exhaust all your methods of gathering
11 information.

12 Q As part of your job, did you ever make
13 classification decisions?

14 A No, I did not.

15 Q Were you ever trained as a foreign
16 disclosure officer?

17 A I was.

18 Q And what was involved in that training?

19 A It was a team that came down from higher
20 headquarters, I'm not sure exactly what level. They
21 came down and they provided us with a briefing, a slide

1 show of training and we signed some paperwork and that
2 was it.

3 Q Now, were you given authority to make
4 decisions on what products were and were not classified
5 based upon that training?

6 A Yes.

7 Q What was involved in that?

8 A Can you repeat the question?

9 Q What was involved in that decision?

10 A Well, generally we tried to keep it simple.
11 We didn't want to ever change any classification
12 authority, especially -- we didn't have the authority.
13 So we used our own products and a lot of our report
14 writers were given the training as well. So the
15 reports were cleared through higher level FDO so we
16 would only use the information that came within our
17 organization that was already cleared.

18 Q Okay. So I guess the classification
19 decisions you were making were derivative in nature?

20 A That's correct.

21 Q Who were the field disclosure officers for

1 your unit?

2 A It was myself, I think CW2 Lebley
3 (phonetic), I think Chief Ehresman and Sergeant Adkins
4 and a lot of the HUMINT reporters. They all received
5 the training as well.

6 Q With regards to the training, can you tell
7 the court how long that training lasted?

8 A Maybe hour and a half, two hours tops.

9 Q What was involved in that training?

10 A Just a slide show with information
11 briefing. We were required to sign some paperwork at
12 the end of it.

13 Q Did you ever work off of a classification
14 guide when you were making your derivative
15 classification decisions?

16 A Occasionally.

17 Q What classification guide did you work off
18 of?

19 A There was the MMCI classification guide
20 that we generally used and there was another one out
21 there, the CENTCOM classification guide as well.

1 Q And again in a general setting, can you
2 explain, like, how you would make that -- use a
3 classification guide to make derivatives classification
4 decisions?

5 A Well, the guide pretty much gave you
6 information on -- depending on what it was in nature,
7 it would give you the proper classification to give it.
8 It was a pretty useful guide.

9 Q And the junior analysts, did they go to the
10 same training?

11 A No, they did not.

12 Q Did you conduct any training on your own to
13 the junior analysts on how they could make
14 classification decisions?

15 A No, I did not.

16 Q When you were making your classification
17 decisions, did you put a declassification date on
18 information that you were classifying?

19 A Sometimes, yes.

20 Q And how did you make that decision as to
21 how long it should remain classified?

1 A The guide would give you the
2 declassified -- certain types of information have
3 certain types of declassification dates.

4 Q Now, I'd like to ask you a few questions
5 about a D6-A computer.

6 A Yes, sir.

7 Q Were the D6-A computers always connected to
8 the SIPRNET?

9 A Unless the network was down, they were.

10 Q And did the network ever go down?

11 A It did occasionally, yes.

12 Q When it went down, I guess, how long was it
13 down?

14 A It depends what the situation was. If
15 there was equipment or whether it could be a few
16 minutes to a couple hours at the most.

17 Q And when the SIPRNET was down, could intel
18 analysts still work on their D6-A computers?

19 A They could.

20 Q Did they have access to information outside
21 I guess of their single computer?

1 A Some. Some -- I'm sorry, they didn't have
2 information external on the web, no.

3 Q Were the D6-A computers connected to the
4 T-drive?

5 A They were.

6 Q Was there any limitation on what a soldier
7 could look at on the T-drive?

8 A No, there wasn't.

9 Q Did you ever have any problems with the
10 D6-A computers crashing?

11 A Yes, we did.

12 Q How often?

13 A It happened pretty frequently.

14 Q When you say frequently, pretty frequently,
15 what do you mean?

16 A Maybe once every couple weeks. For some
17 soldiers more than others. Some less. I went through
18 three myself.

19 Q So when you say you went through three,
20 what do you mean?

21 A My computer crashed three times.

1 Q And when your computer crashed, what
2 happened?

3 A I had to go to Mr. Milliman, the field
4 service representative, and usually in the evening he
5 would take my old computer and the next morning he
6 would have everything back on it and ready to go the
7 next day.

8 Q Did you ever lose information when your
9 computer crashed?

10 A No. He was able to transfer everything
11 over for me.

12 Q Did you, as the S2 section, ever put any
13 restrictions on analysts backing up their information
14 on CDs?

15 A No, I did not.

16 Q Would you encourage or discourage that
17 practice?

18 A I guess I would encourage it.

19 Q Why is that?

20 A Just for the -- like you said, the
21 reliability of our computers.

1 Q Was there any limitation put out on what an
2 analyst could and could not burn on the CD?

3 A No, there wasn't.

4 Q With regards to the SIPRNET, was there any
5 limitation on what an analyst could and couldn't save
6 from the SIPRNET onto a CD?

7 A No, there wasn't.

8 Q I now want to ask you a few questions about
9 analytical terms that you might see in an intel
10 product, okay?

11 A Yes, sir.

12 Q Are you familiar with the term intelligence
13 gap?

14 A Yes, I am.

15 Q How are you familiar with that term?

16 A We use intelligence gap all the time. It's
17 when we don't know a certain piece of information and
18 we do everything we can to try to fill that gap with
19 whatever that gap is.

20 Q If you have actual knowledge of a fact,
21 would you refer to it as an intelligence gap?

1 A Say it again, sir.

2 Q If you have actual knowledge of a
3 particular fact, would you refer to that fact as a
4 intelligence gap?

5 A If we had knowledge of a fact? No, I don't
6 think it would be a gap.

7 Q What would you call it?

8 A Probably an assumption.

9 Q I'm sorry?

10 A Possibly an assumption or a partial,
11 partial gap maybe.

12 Q Maybe I didn't say my question correctly.
13 If you had actual knowledge of a particular
14 fact like you knew the fact?

15 A Okay.

16 Q How would you refer to that in an
17 intelligence product?

18 A It would just be a fact.

19 Q You used the other term as assumption.
20 Would you refer to something as partial assumption?

21 A When we have partial information and we

1 took a best guess and we had almost enough information
2 we could make an assumption it's true.

3 Q If you had actual knowledge of a fact,
4 would you call it an assumption?

5 A You could.

6 Q Why would you call it an assumption if you
7 had actual knowledge?

8 A You might not have all the knowledge of the
9 fact. But if you have all the knowledge of the fact
10 it's not an assumption.

11 Q Okay.

12 From January to May of 2010, did your unit
13 have any, did your unit conduct any training on the web
14 sites that the enemy went to to get information?

15 A Not to my knowledge, no, sir.

16 Q Do you know before January 2010, whether or
17 not your unit did any training as to what web sites the
18 enemy went to?

19 A No, I don't.

20 Q During your -- how long have you been in
21 the intelligence field?

1 A Since 2005.

2 Q Since being in the intelligence field, have
3 you seen any sort of information that lists the web
4 sites that enemies go to to get information?

5 A I have.

6 Q And where did you receive this at?

7 A Just in training when I was at the advanced
8 course open source training.

9 Q In any of that training did it name
10 WikiLeaks as a website?

11 A I don't remember, sir.

12 Q Did you ever see anything that listed
13 WikiLeaks as a place in which the enemy went to?

14 A Not in an official capacity, no, sir.

15 Q In an unofficial capacity?

16 A Just what I see on television and the
17 media.

18 Q So post this incident?

19 A Yes, sir.

20 MR. COOMBS: Thank you. I have nothing
21 further.

1 THE COURT: Cross-examination?

2 MR. FEIN: Can we have a moment, Your
3 Honor?

4 THE COURT: Yes.

5 CROSS-EXAMINATION BY MR. FEIN:

6 Q Captain Lim, I'd like to first have you
7 focus on the T-SCIF SOP, that testimony you just gave.

8 There weren't any physical restrictions for
9 a member of the S2 section to enter the T-SCIF area?

10 A Did you say there were not?

11 Q Were there physical restrictions for a
12 member of the S2 section?

13 A Just the SIPR lock.

14 Q Who had a combo?

15 A Just the people that had a need-to-know.
16 Very small group.

17 Q What was that population based off of?

18 A Need-to-know.

19 Q And who were the people who had a
20 need-to-know?

21 A It was every soldier that worked in the S2

1 shop and a very few select others who were in there
2 more often than others.

3 Q And those are everyone -- all of those
4 people had top secret SCI clearances?

5 A That's correct.

6 Q When they entered, they already had the
7 code to the SIPR lock?

8 A Yes.

9 Q When they existed they had to just exit?

10 A No. (Inaudible.)

11 Q You took over S2 how long into the
12 deployment?

13 A About three months.

14 Q When you took over, you didn't change any
15 of the, at least, functional TTP SOPs that were
16 going --

17 A No, sir; I did not.

18 Q When a soldier -- they weren't searched,
19 their physical body, were they?

20 A No, sir.

21 Q Why not?

1 A I don't think that's normal. I've never
2 seen that before.

3 Q Why didn't you institute it when you were
4 there and took over the S2?

5 A I didn't think there was a need to search
6 fellow soldiers when they left the SCIF.

7 Q Why?

8 A Everyone should be doing the right there.
9 It was a level of trust.

10 Q Why is that important, a level of trust
11 with the average intel analyst?

12 A They have access to lots of classified
13 information so you had to have that level of trust to
14 keep it.

15 Q And there was nothing that prevented a
16 soldier from -- there was nothing, not even a soldier,
17 there was nothing that prevented PFC Manning on his
18 D6-A from downloading classified information on the CD
19 and walking out the door with it?

20 A No, sir.

21 Q Why was that?

1 A There was no measures in place. There were
2 no physical pat-downs when you left the SCIF.

3 Q Was there a requirement to have CD that
4 were burned inspected when they were burned on the
5 SCIF?

6 A Yes, there was.

7 Q To physically take a CD on someone and have
8 it inspected?

9 A No, there was not.

10 Q Okay. So a analyst was free to burn CDs
11 when they saw fit from a SIPRNET D6-A computer?

12 A Correct.

13 Q Why was there?

14 A Because our job required to burn CDs.

15 Q And everyone's job in the SCIF, not just
16 senior officers, but everyone's job?

17 A Yes, depending on who was issued the
18 project. They could eventually be the one that burned
19 the --

20 Q Why was that a requirement?

21 A It was dictated by our mission.

1 Q And how did -- you explained your forward
2 disclosure officer duties but what specifically was
3 your job as an FDO? What were you responsible for?

4 A To determine what could and could not be
5 released to foreign countries.

6 Q And that's what the training was focused
7 on?

8 A Yes, it was.

9 Q Did you make classification decisions on
10 what is or is not classified in that job?

11 A Repeat the question again?

12 Q You didn't make decisions on what was or
13 was not classified in that job, did you?

14 A No, we used, like we said, what was already
15 properly classified.

16 Q So how would you divulging or using
17 classified information -- if you don't know please
18 notify me as I'm asking for the court -- how would a
19 document be marked if you, as the FDO, knew you could
20 authorize that to go to, for instance, the Iraqis?

21 A It would be marked, it would say secret,

1 releasable to Iraq.

2 Q So your job was to find that on the page,
3 confirm and say that can go?

4 A Yes, that's how we operate. Yes, that's
5 correct.

6 Q So you didn't get a blank document with no
7 classification markings, read it and say that can go to
8 the Iraqis?

9 A No, no, correct, we did not.

10 Q Okay. And this -- now, the classification
11 guide, you mentioned that just now and mentioned in
12 testimony before. You had classification guides that
13 you remember from MMCI three star headquarters?

14 A Yes, sir.

15 Q And you had a classification guide from
16 CENTCOM?

17 A Yes.

18 Q And that classification guide they list all
19 the different types of documents that you might be
20 confronted with a document?

21 A Yes.

1 Q So it says something like the TTP of a
2 military mission?

3 A Correct.

4 Q It might say a -- well, please, tell the
5 court what it could say, examples, unclassified of
6 course.

7 A It really depended on the type of
8 information you're releasing. Depending on what it
9 was, you say enemy TTP or troop sites or whatever,
10 depending what it was it would tell you.

11 Q So troop locations?

12 A Correct.

13 Q Troop movements?

14 A Yes.

15 Q You would have one column that said that,
16 you would have another column that then said what the
17 classification of that information is?

18 A Correct.

19 Q So you would take that column, you would
20 look at it, you would then using your derivative
21 classification training that all analysts received,

1 correct --

2 A I don't remember.

3 Q Just general analytical training?

4 A Okay, yes.

5 Q Did all analysts receive classification
6 training?

7 A To an extent.

8 Q On how to create a document --

9 A Yes.

10 Q So then you would read that column, see if
11 the information you have in front of you matches that,
12 correct?

13 A Correct.

14 Q And if it did match that description, you
15 then would put whatever the classification is next to
16 it, correct?

17 A That's correct.

18 Q What was the rule if you had doubt?

19 A You were supposed to contact the original
20 information owner.

21 Q What do you mean by that?

1 A The person who originally created that
2 information. They're the only ones who have the
3 declassification authority on that subject.

4 Q Speaking of declassification, you testified
5 about that, too. Did you have authority to declassify
6 information as an FDO?

7 A No.

8 Q Did anyone in your brigade have
9 declassification authority?

10 A No, we did not.

11 Q What level is that authority typically at?

12 A I'm not sure. It's above us. I don't know
13 exact --

14 Q Us being who?

15 A 2nd Brigade level.

16 Q Is that something that your soldiers knew?

17 A Yes, they should have known.

18 Q When you were operating as an FDO, or not
19 even as an FDO, just generally reviewing documents,
20 were documents -- were they marked with the
21 classification markings?

1 A Yes, they were.

2 Q And they were marked, if it's a paper, top
3 and bottom?

4 A Yes, and before each paragraph started as
5 well.

6 Q So each paragraph had marks?

7 A Yes.

8 Q So parentheses S, parentheses C?

9 A Correct.

10 Q And whatever other control mechanisms would
11 have to be in there?

12 A That's correct.

13 Q If it was a slide show it would have a
14 marking?

15 A Yes, it should.

16 Q What about reports from databases or
17 information pulled from SIPRNET, how were they marked?
18 Let's use a SIGACT.

19 A A SIGACT, it all depends on the person who
20 actually inputted it. It may or may not actually say
21 the classification before they start describing the

1 event. It all depended on the unit SOP.

2 Q Was that a field in CIDNE or SIPR for the
3 SIGACT?

4 A I don't know.

5 Q You don't know, you don't remember?

6 A I don't know.

7 Q What about State Department information?
8 You looked at State Department information?

9 A I did, sir.

10 Q Those always had markings on them?

11 A Yes, they did.

12 Q They said whether they were classified or
13 not?

14 A Yes.

15 Q And intel media web pages, do the web pages
16 themselves have markings on them?

17 A I don't remember sir.

18 Q Continuing on with the focus on SIPRNET.
19 You spoke about data mining was expected for good
20 analysts.

21 That's data mining of the databases that

1 you needed in Iraq?

2 A Correct.

3 Q That was data mining for information that
4 you needed for the mission?

5 A Correct.

6 Q So that if you work nights doing future ops
7 that was data mining for the RFIs, the requests for
8 information, that was received, to answer?

9 A Correct.

10 Q And the Army gave or you had D6-A as a tool
11 to assist with data mining?

12 A That's correct.

13 Q And you testified earlier that from your
14 point of view there was no real restriction on how one
15 could data mine, but that was based off the tools that
16 you gave them as the leader, correct?

17 A Yes, sir.

18 Q Those were what query troop was for?

19 A Yes, sir.

20 Q That's what the mapping programs were for?

21 A Yes, sir.

1 Q Even intel link could be for?

2 A Yes, sir.

3 Q Google searching?

4 A Yes, sir.

5 Q Is that the data mining you're speaking of?

6 A Yes.

7 Q Or CIDNE?

8 A That's correct.

9 Q Now, you are aware that CIDNE allowed you
10 to import SIGACTS at 30-day increments, you could
11 download them all?

12 A Yes.

13 Q You could actually go onto the CIDNE web
14 page and right click on the bottom and you could say
15 export Excel?

16 A Correct.

17 Q That was common practice to export those?

18 A Yes.

19 Q Are you familiar with the CSV file format?

20 A It's an Excel file.

21 Q Okay. And CIDNE?

1 THE COURT: What was it called again?

2 MR. FEIN: CSV, Your Honor.

3 THE COURT: Thank you.

4 Q Do you know the difference between CSV and
5 Excel?

6 A No, sir.

7 Q CSV just opens up in Excel.

8 A Okay. No, I don't. It's similar to an
9 Excel file.

10 Q So it's similar to a table like you find in
11 a spreadsheet.

12 A Spreadsheet.

13 Q Thank you.

14 And did CIDNE allow you to do this map
15 export?

16 A Yes, it did.

17 Q And there was an expectation for analysts
18 like PFC Manning to do that and use that information on
19 D6-A?

20 A Correct.

21 Q And that's for CIDNE Iraq?

1 A Correct.

2 Q How often did you task your soldiers to
3 look for CIDNE Afghanistan?

4 A I never did.

5 Q Why?

6 A It was irrelevant to the mission.

7 Q What about the TTPs from Afghanistan being
8 used in Iraq in your AO?

9 A In my AO, no, I can't recall any time.

10 Q Would there be a reason to back up CIDNE
11 Afghanistan data in your S2 shop while you're in
12 southeast Baghdad, Iraq?

13 A No, sir. No, sir.

14 Q So the same good analysts that were
15 expected to data mine, were they expected to download
16 those on CDs and use them for personal use?

17 A No, sir, not personal use.

18 Q Why?

19 A That's -- that information doesn't belong
20 to any one individual. It's supposed to stay on the
21 network.

1 Q Who does it belong to, though?

2 A It belongs to the government.

3 Q The U.S. Government. What network?

4 A SIPRNET.

5 Q And SIPRNET, who has access to SIPRNET?

6 A Anyone who is cleared, any US soldier who
7 is cleared to, that has an account.

8 Q So they have to have a secret security
9 clearance?

10 A Yes, they do.

11 Q And even more than soldiers having access
12 to SIPRNET?

13 A Correct.

14 Q But it's US citizens with secret clearance?

15 A That's correct.

16 Q How often did you personally see soldiers
17 backing up their information on CDs, their analyst work
18 product type of information, the data mining?

19 A I never saw that.

20 Q You never saw one soldier do that?

21 A No, negative.

1 Q Continuing on SIPRNET and D6, what -- when
2 you sent out -- you said you e-mailed out the link to
3 NCD?

4 A Yes, sir.

5 Q In that e-mail you said this is something
6 that's useful for your mission?

7 A Correct.

8 Q Did that mission include researching issues
9 in South America?

10 A No, it did not.

11 Q What about issues in Iceland?

12 A No, sir.

13 Q Issues in Asia?

14 A No, sir.

15 Q Focus really was southeast Baghdad?

16 A Correct.

17 Q Maybe even larger, you said in all of Iraq?

18 A Yes, yes, sir.

19 Q What was your mission 210 Mountain at that
20 time?

21 A It was train and mentor, advise and assist

1 the Iraqi security forces so they could eventually take
2 over their own areas to promote a safe and secure and
3 stable Iraq.

4 Q And you used NCD yourself?

5 A I did.

6 Q Did you use it before you sent that link
7 out?

8 A I did.

9 Q And you actually read State Department
10 cables referencing Baghdad and Iraq?

11 A I did.

12 Q When you used NCD you went into the system
13 and typed in Baghdad?

14 A I don't recall how we narrowed it down,
15 whether it was typing or drop down boxes.

16 Q But you did a search term and searched for
17 it?

18 A Correct.

19 Q And those cables that related to your
20 search showed up in the screen?

21 A Correct.

1 Q You clicked on the cable to read it?

2 A Yes.

3 Q Did you save the cable after that?

4 A No, I didn't.

5 Q You just read the cable?

6 A Yes, sir.

7 Q Do you remember if it had an export to
8 Excel function that you saw on the screen?

9 A I do not.

10 Q Did you ever authorize as the S2 anyone,
11 including PFC Manning, to install a program in order to
12 grab all those cables, not through the method that NCD
13 prescribed?

14 A No, I did not.

15 MR. COOMBS: Object, Your Honor, to the
16 statement that NCD prescribed. I don't believe this
17 witness can testify to the manner in which NCD
18 prescribed. In fact, I think he said the opposite in
19 Iraq.

20 THE COURT: Do you know what NCD
21 prescribed?

1 THE WITNESS: Prescribed, ma'am?

2 MR. FEIN: I could rephrase the question,
3 Your Honor.

4 THE COURT: Let's do that and if you still
5 have an objection, let me know.

6 BY MR. FEIN:

7 Q Captain Lim, when you went on NCD, you
8 searched for cables and you clicked on the individual
9 cable and read the cable?

10 A Correct.

11 Q You either chose to save or print it or did
12 neither?

13 A Correct.

14 Q And then you went back to read another
15 cable?

16 A Correct.

17 Q You did not download the cables?

18 A I did not, no, sir.

19 Q And you did not authorize PFC Manning to
20 use a program to download all the cables?

21 A I did not.

1 Q I didn't mention Wget before. Have you
2 ever heard of it?

3 A I have, sir.

4 Q How have you heard of it?

5 A Through the media.

6 Q Had you heard it prior to --

7 A No, sir.

8 Q -- the court-martial or the article --

9 A Correct, I have not.

10 Q Have you ever see the program Wget but not
11 heard of it?

12 A No, sir.

13 Q But you have some computer knowledge?

14 A Very little.

15 Q So you never received a request from PFC
16 Manning asking to use or install Wget on your computer?

17 A No, sir.

18 Q Did you ever process a request to install
19 any software to help with data mining?

20 A No, I didn't.

21 Q On the D6-A?

1 A No, sir. I did not.

2 Q When did you learn about soft executables,
3 what an executable file is?

4 A In college.

5 Q In college?

6 A Yes, sir.

7 Q I'd like to now -- you testified earlier
8 about patterns and trends and kind of what the
9 expectation was for all-source intelligence analysts?

10 A Yes, sir.

11 Q First you spoke with predictive analysis.
12 Did you rely on PFC Manning's work product to do that?

13 A We did.

14 Q Did that work product include pulling
15 SIGACTS?

16 A They did.

17 Q Were those SIGACTS of past events?

18 A Correct.

19 Q Are there SIGACTS of future events?

20 A No, sir.

21 Q How often was predictive analysis done from

1 SIGACTS of current, meaning the last 12 hours?

2 A Very little, unless there was a, I guess a
3 no notice mission. That's pretty rare.

4 Q So it's common the entire time during the
5 deployment that all this predictive analysis was based
6 off of old SIGACTS?

7 A Yes, sir.

8 Q SIGACTS that still had value to you to
9 advise commanders?

10 A Correct.

11 Q And you also testified earlier that the
12 night shift predictive analysis of future operations
13 wasn't necessarily real time relied on by commanders?

14 A Correct.

15 Q Were there products relied on by
16 commanders?

17 A There were.

18 Q What were, how were the products used?

19 A Well, if a commander wanted to go in a
20 certain area and he didn't have his own analyst at his
21 disposal, we would do the work and we provide them,

1 here's everything that happened in this area you asked
2 for for the last 90 days.

3 Q What do you mean by everything that
4 happened in an area?

5 A Everything that we can pull from the CIDNE
6 SIGACTS database in a certain area on the map.

7 Q And that includes past IED attacks?

8 A Yes, sir.

9 Q That includes, does that include key leader
10 engagements?

11 A Yes, sir.

12 Q What does that mean?

13 A Key leader engagement?

14 Q Yes.

15 A Usually one of our key leaders, deputy
16 commander, anyone that we determine is key, battalion
17 commander, company commander could meet with a local
18 national sheik, high acting government or foreign
19 government or a local, like, a general officer for a
20 security force of the host nation country.

21 Q And that information was located in the

1 SIGACTS?

2 A Yes, it was.

3 Q Were those generals and other individuals'
4 names in those SIGACTS?

5 A Sometimes.

6 Q Earlier you testified about the difference
7 between very doctrinal terms between key source versus
8 a source, intelligence sources.

9 You would agree that when it comes to
10 intelligence sources they vary depending on the level
11 of doctrinal or level of intelligence that you're at?

12 A Correct.

13 Q So at the highest level of HUMINT sources,
14 they're heavily protected, higher network of agencies?

15 A Yes.

16 Q Even at the four star and three star level
17 they run sources that you might not have visibility on
18 at brigade level?

19 A That's correct.

20 Q And you agree that brigade has visibility
21 that potentially maybe the grunt on the ground doesn't

1 have visibility on?

2 A Yes, sir.

3 Q You also agree that any type of tactical
4 questioning that might go into a SIGACT is still a
5 source?

6 A Correct.

7 Q Of information?

8 A Yes, it is.

9 Q And that is information that your S2
10 section relied on at times?

11 A Yes, sir.

12 Q Because you had individuals like PFC
13 Manning query CIDNE database for that type of
14 information?

15 A Correct.

16 Q That's the information that went into
17 predictive analysis?

18 A Yes, sir.

19 Q And you, in the intelligence field, used
20 that information?

21 A We did.

1 Q And that includes individual Iraqi names?

2 A Correct.

3 Q Or other individual names that were in the
4 SIGACTS?

5 A Yes, sir.

6 Q In fact, you testified earlier that it's up
7 to each unit's SOP of how much information goes into
8 CIDNE?

9 A Correct.

10 Q So CIDNE could have, a report could have a
11 little bit of information and another report could have
12 a lot more information depending on the SOP?

13 A Yes, sir.

14 Q CIDNE also included operational code words,
15 frequencies?

16 A I don't know, sir.

17 Q TTP was how we conduct certain types of
18 missions?

19 A I'm not sure.

20 Q Did it include when a Humvee would identify
21 a secure area or when a patrol -- how they would secure

1 an area if there was an event that occurred?

2 A If the operator actually typed in their
3 enemy (inaudible) yes, it could, sir.

4 Q So going back to HUMINT reporting, although
5 HUMINT reporting includes intelligence source, that's a
6 different form of reporting in the chain of human
7 intelligence?

8 A Yes, sir.

9 Q Now, SIGACTS also contain battle damage
10 type information, correct?

11 A That is correct.

12 Q What is battle damage information?

13 A It's an IED attack and it could describe
14 the damage to certain vehicles that we were riding in.
15 To that effect.

16 Q How is that useful to the enemy, how could
17 it be, excuse me?

18 A If the analysis was able to see what type
19 of munitions were used and having that with the amount
20 of damage that was done, well, then the enemy would
21 have a capability to divulge to them on how to attack

1 certain vehicle platforms.

2 Q And that's the type of information that
3 also was in CIDNE?

4 A In the SIGACTS.

5 Q I'm sorry, thank you. The SIGACTS within
6 CIDNE?

7 A Yes, sir.

8 Q Captain Lim, you never personally saw
9 anyone install an executable file onto a D6 machine,
10 did you?

11 A No, sir.

12 Q And it was well understood in the S2 shop
13 that the D6 contractors were there to assist with any
14 type of program issues?

15 A Yes, sir.

16 MR. FEIN: No further questions, Your
17 Honor.

18 THE COURT: Redirect?

19 MR. COOMBS: Yes, Your Honor.

20 REDIRECT EXAMINATION BY MR. COOMBS:

21

1 Q Captain Lim, with regards to data mining,
2 any prohibition on an analyst doing general data mining
3 to see what information is out there?

4 A No, sir.

5 Q So if I were an analyst in your shop and I
6 didn't have anything going on in the evening that I had
7 to do, is there any prohibition on me just surfing the
8 SIPRNET to see what's there?

9 A No, sir.

10 Q If I found something that I like, thought
11 was interesting, any prohibition of me downloading
12 that?

13 A No, sir.

14 Q And saving that on a CD?

15 A No, sir.

16 Q You said you never saw PFC Manning save
17 information down on a CD; is that right?

18 A Correct.

19 Q If you had seen him save information down
20 on a CD, would you have any issues with that?

21 A I guess it would depend on what would the

1 information be or.

2 Q Or maybe prohibition on what he would save
3 down onto a CD?

4 A No, no, sir. There was not.

5 Q Now, with regards to the T-drive, was there
6 any prohibition on what they could save on a T-drive?

7 A No, sir; there wasn't.

8 Q And my understanding was the T-drive was
9 open to anyone looking at what somebody else had in
10 their folders?

11 A That's correct.

12 Q Did you ever look at PFC Manning's folders
13 to see what he saved?

14 A I don't remember if I did or not, sir.

15 Q Would he be prohibited in any way of saving
16 a whole bunch of information that he found on the
17 T-drive?

18 A No, he would not be prohibited.

19 Q With regards to downloading the cables, you
20 indicated that you had given a directive basically to
21 look at the cable and incorporate that into your work

1 products?

2 A Yes, sir.

3 Q Did you put out any prohibitions on how
4 many cables the analysts saved?

5 A No, sir.

6 Q Assuming an analyst wanted to, if they
7 decided to save all the cables that they could, was
8 there any prohibition that was put out on that?

9 A No, there was nothing put out, sir.

10 Q With regards to sources on the ground, what
11 the ground units might come across and get information
12 from, those types of sources, what do you call those?

13 A Depending how frequently you used them,
14 probably contacts.

15 Q Now, if it's somebody whose name appears
16 one time only as one upshot in a SIGACT based upon a
17 unit rolling in, talking to somebody, saying what
18 happened here, would that be a source?

19 A We call them a one time source or a
20 contact.

21 Q And those types of individuals, is there

1 any sort of amount of trust or reliability that you've
2 put in to that information as an intel analyst?

3 A Can you say it one more time, sir?

4 Q It might be a bad question as far as how I
5 drafted it.

6 With regards to a one time source, as an
7 intel analyst do you put any sort of stock or trust
8 into one time sources?

9 A You have to consider it but you try to do
10 your best with corroborating information.

11 Q Now, is everyone who speaks to us on the
12 ground, are they the good guys?

13 A Not always; no, sir.

14 Q So there could be situations or could there
15 be sources where a unit rolls in and interviews
16 somebody and that's actually one of the bad guys?

17 A Correct.

18 Q The SIGACTS, when there's information in
19 the SIGACTS about an event that happened, is this
20 something from an intelligence analyst standpoint that
21 you know whether or not the enemy watches when they

1 attack us to see how we respond?

2 A That happens sometimes; yes, sir.

3 Q Has the enemy ever used our TTPs against
4 us?

5 A Yes, they have.

6 Q How do they do that?

7 A Through our own patterns. They exploit our
8 own weaknesses just like we do them.

9 Q Do you know how the enemy comes into that
10 information?

11 A Sometimes they'll have a guy sitting and
12 watching and taking notes. And if that was a pattern,
13 that's what they use to plan their events.

14 Q And when units roll around Iraq, when we're
15 there in Afghanistan now, do we move in secret or are
16 we moving in a broad open?

17 A Both, sir.

18 Q And when we move out in the open, do we try
19 to hide our movements in any way?

20 A No, sir.

21 Q When there is a incident and there is some

1 damage done to a convoy, do we try to hide the BDA,
2 battle damage?

3 A I wouldn't say hide it, sir. Try to be
4 policed up as quick as possibly can be done.

5 Q If the enemy is present when that happens,
6 are they able to see the battle damage?

7 A Yes, yes, sir.

8 Q You talked about not giving specific
9 permission to use an executable file or saying someone
10 can use it, do you know if there's any sort of
11 prohibition put out on executable files?

12 A No, I do not, sir.

13 THE COURT: You don't know or there was
14 none?

15 THE WITNESS: Oh, I don't know if there was
16 anything put out, ma'am.

17 Q And follow-up question. Do you know
18 whether or not there was ever any sort of do not use
19 executable files, burn CDs?

20 A No, I do not. No.

21 Q Do you know as the S2 whether or not you,

1 as the S2, would have put into that practice?

2 A Of burning executable files --

3 Q Of using an executable file from a CD?

4 A No.

5 Q You would not prohibit it?

6 A I wouldn't have put out anything.

7 Q Okay. Thank you.

8 THE COURT: What was that answer again?

9 THE WITNESS: No, I said no.

10 THE COURT: Okay.

11 Captain Lim, I just have a couple of
12 questions for you.

13 EXAMINATION BY THE COURT:

14 Q I wasn't sure I understood your testimony
15 on downloading information from the SIPR to CDs. I
16 thought I heard you say there's no prohibition on it?

17 A That's correct.

18 Q But I also thought I heard you say you
19 never saw it done?

20 A Well, I didn't work in the SCIF, ma'am, so
21 I never physically saw it actually happening.

1 Q Did you visit the SCIF?

2 A I did.

3 Q Frequently or infrequently?

4 A Depending on what my (inaudible) was like,
5 on a slow day I would go four or five times a day. And
6 sometimes I would be in there once a day.

7 Q Did you see CDs lying around in the SCIF?

8 A I did.

9 Q Did you make any assumptions as to what
10 they were or did you know what they were?

11 A I assumed they were blank CDs, ma'am.

12 Q Why did you assume that?

13 A I didn't have a good knowledge that
14 soldiers were burning information to disks for backup
15 data. I assume that's what the T-drive was for. My
16 only knowledge for burning CDs was our mission to give
17 Iraqis releasable intelligence. I assumed that was the
18 only reason for the CD in the SCIF.

19 Q When you saw these CDs, did they have
20 classification markings on them?

21 A No, they didn't.

1 Q I thought I heard -- did you testify
2 earlier that soldiers were allowed to listen to music
3 on the SIPR computer?

4 A Yes, they were.

5 Q Would they use CDs to bring in the music?

6 A Yes, they would.

7 Q I thought I heard you testify earlier that
8 no analyst asked you to put executable files or
9 programs on their computer. Would they come to you?

10 A No, they would not.

11 Q If a soldier wanted to put an executable
12 file on the computer via CD and run it, what would that
13 person have to do, if anything?

14 A To run it just off the CD?

15 Q Yes.

16 A Nothing. I mean, unless someone caught
17 them, they would just be able to put it in and run it.

18 Q If they wanted to put a program on the
19 machine itself?

20 A They would have to go see the FSR,
21 Mr. Milliman, because he had the illustrative rights.

1 Q So if a soldier wanted to put a program on
2 the machine itself and not see Mr. Milliman, would the
3 machine let him do it?

4 A I'm not sure, ma'am.

5 Q Okay.

6 And again, as the FDO, walk me through the
7 derivative classification, what you do and don't do.

8 A Like I said, we kept it simple. We didn't
9 operate outside the parameters. So we took reports
10 that were already preclassified by our report writers
11 or other report writers in the area and we only used
12 that information that was already cleared and
13 releasable to Iraq. What we did as the FDO is the
14 final check was to make sure the source document that
15 said releasable to Iraq matched the product.

16 Q So if I'm understanding, you would get a
17 new product that would match a type of information in
18 the classification guide?

19 A We would get a report that's already been
20 cleared through, you know, however the HUMINT reports
21 had cleared from the top down, we would get the

1 approved reports and create our product based on the
2 document that's already been vetted. As the FDO our
3 job so make sure whatever PowerPoint was produced off
4 that document it actually matched to the releasable
5 section only.

6 Q So if I understand your testimony then, you
7 would receive something that was clear for you to give
8 to the releasable to Iraq --

9 A Yes, ma'am.

10 Q -- then your organization or some entity
11 would create a PowerPoint presentation based off of
12 that report that was cleared before and you would use
13 your derivative classification to classify that that
14 PowerPoint?

15 A No, it would stay as is. We just made sure
16 the soldiers didn't go above the tear line didn't use
17 the secret to US soldiers only, we made sure it was
18 only releasable to Iraq only. It more like a
19 doublecheck to make sure we didn't put anything that
20 was unauthorized there.

21 THE COURT: Any followup based on that?

1 MR. COOMBS: No, Your Honor.

2 MR. FEIN: No, Your Honor.

3 THE COURT: All right. Temporary or
4 permanent excusal?

5 MR. COOMBS: Permanent, Your Honor.

6 MR. FEIN: Temporarily.

7 THE COURT: Captain Lim, you are
8 temporarily excused.

9 Please don't discuss your knowledge of the
10 case other than with counsel or the accused while the
11 trial is still going on.

12 MR. COOMBS: Your Honor, can we have a
13 15-minute break before our next witness?

14 THE COURT: Any objection?

15 MR. FEIN: No, ma'am.

16 THE COURT: Court is recess until 1540 or
17 3:40 in civilian parlance.

18 (Court in recess.)

19 THE COURT: Court is called to order. Let
20 the record reflect all parties that were present when
21 the court last recessed are still present.

1 Mr. Coombs?

2 MR. COOMBS: The defense calls Barclay Keay
3 to the stand.

4 Whereupon,

5 BARCLAY KEAY,
6 called as a witness, having been first duly sworn to
7 tell the truth, the whole truth, and nothing but the
8 truth, was examined and testified as follows:

9 MR. WHYTE: For the record, you're Captain
10 Barclay Keay.

11 THE WITNESS: Yes.

12 DIRECT EXAMINATION BY MR. COOMBS:

13 Q Captain Keay, were you ever assigned to 210
14 Mountain?

15 A Yes.

16 Q When was that?

17 A I linked up with my unit at Ft. Drum in
18 late October, I believe.

19 Q Of what year?

20 A 2009.

21 Q What was your assignment when you were

1 initially signed to 2nd BCT?

2 A I hadn't got a position yet. It was just,
3 the unit was in the process of deploying transitions
4 downrange and it was kind of expected I would
5 eventually go down to battalion. The dates weren't
6 given to me yet and I don't think no one had known at
7 that time. I was physically getting deployed at first.

8 Q Did you ultimately deploy to Iraq?

9 A Yes.

10 Q When was that?

11 A November 2009.

12 Q When you were deployed to Iraq in
13 November 2009, what was your initial duty position
14 there?

15 A When I first arrived it was to be on the
16 night shift. I think that night I actually arrived,
17 you know, just read and understand everything that was
18 starting to go on and they were most likely expecting
19 me to go down to battalion which was in southern area
20 of Baghdad. That was specifically the area I started
21 reading on and getting spot up on.

1 Q As part of the night shift were you the
2 night shift OIC?

3 A I was, yes.

4 Q How many soldiers did you have working for
5 you as the night shift OIC?

6 A I believe there was three.

7 Q Who were those soldiers?

8 A The ones I remember were Coolly, Pagent and
9 Manning.

10 Q Did you have an NCO on the night shift with
11 you?

12 A Pagent was considered the NCO. He was the
13 senior ranking but he wasn't an E5 at that time.

14 Q Do you know what his ranking was at the
15 time?

16 A Specialist.

17 I don't think they had enough to go around.
18 That wasn't my decision to make and they were working
19 with what they had and that wasn't -- Pagent was next
20 in line for the supervisory role.

21 Q What was your rank at that point?

1 A 03.

2 Q You said yourself and then you had
3 Specialist Pagent.

4 What were the ranks of the other two
5 soldiers at the time? Do you recall them?

6 A I don't exactly. I believe they were both
7 specialists, but I'm not certain.

8 Q As the night shift OIC, how did you provide
9 supervision to the soldiers working underneath you?

10 A Right. So they were, they were working
11 within different teams from what I remember. We
12 weren't a group. We were more a skeleton group that
13 was left over from the daytime shift which was
14 primarily where everybody worked and networked and
15 figured everything out and was planning things.

16 Each individual, those three that were left
17 over from their team had tasks and things that they
18 needed to accomplish from when they were part of the
19 duration of that night, whatever it might have been.

20 Q Were you involved in that testing?

21 A No.

1 Q How did you supervise, I guess, the
2 soldiers then that were working on the night shift?

3 A We all had our tasks from what we were
4 expected to do, but I would say it was more in the
5 lines of, make sure people were getting food.

6 I would encourage them to go to the gym and
7 kind of get away from the computer from time to time
8 and make sure that they weren't off taking too many
9 smoke breaks or being away too long. That they were
10 showing and doing what they were supposed to be doing.

11 Q Did the night shifts always have tasks for
12 them to complete on a shift?

13 A I don't -- I mean -- yes, but I wasn't
14 tracking all the tasks. They had to report to their
15 supervisor in the morning, and there wasn't any issues
16 that were brought up to me as far as them not
17 accomplishing things that they needed to get done.

18 Q So as the night shift OIC, did you ever go
19 to any of the three soldiers that were working for you?

20 A I did, but it was more for myself to learn
21 and figure out what was going on and to see how things

1 were working and to understand what each person was
2 kind of doing, contributing towards.

3 I wasn't, I didn't have a list of things
4 that they were expected to do throughout the duration
5 of the time.

6 Q You said for yourself to learn. Why was,
7 why were you in a situation where you were kind of
8 learning what would be done in an S2 section?

9 A Most of what I was learning was trying to
10 understand the dynamics and the threat of the area that
11 I was expected to go to. And be the S2. So my primary
12 focus at the time was to learn as much as I could so I
13 would give that to the boss I knew I was going to have
14 in the future.

15 Q Did you ever transition to a different
16 position during the deployment?

17 A Yes.

18 Q When was that?

19 A This was, I believe it was January 1st
20 where I actually physically got on the helicopter and
21 went down to Capivera in southern Baghdad.

1 Q So if I understand your testimony from
2 essentially November of 2009 to about January 1st, 2009
3 you were the night shift OIC?

4 A No. I had, I was night shift for, I think,
5 a couple or half that time, couple weeks or so and got
6 to the day shift as things, as they anticipated or knew
7 that I was leaving. So they got me back on the day
8 shift cycle. I continued to read things that involved
9 where I was going and then logistically eventually got
10 down there. It took some time to kind of coordinate
11 and physically move me from someplace, it sounds easy,
12 but logistics and things I guess to happen.

13 Q When did you transition from the night
14 shift to the day shift?

15 A I don't remember. Sometime in December of
16 2009.

17 Q Do you recall if it was before Christmas or
18 after Christmas?

19 A Most likely before. That's about as
20 detailed I remember from when it happened a few years
21 back.

1 Q When you were taken out of your position as
2 the night shift OIC and moved to the day shift, do you
3 know if another officer replaced you as the night shift
4 OIC?

5 A I don't think so, no. it wasn't that type
6 of position.

7 Q So I guess after you were moved to the day
8 shift, who was left on the night shift?

9 A So by that time -- and I can't remember
10 exactly so just please bear with me -- but I believe
11 things had changed with personnel and other things.

12 Mine, the unit was recently deployed and
13 they were constantly trying to figure out how to
14 structure and reorganize. It wasn't uncommon for
15 individuals to shift. It wasn't a set linear structure
16 of everyone was kind of set to do. So things changed.
17 I don't remember another officer replacing me when I
18 went to days.

19 Q Now, I want to ask you a few questions
20 about various media. The T-SCIF when you were the
21 night shift OIC, okay?

1 Did you ever see soldiers listening to
2 music in the T-SCIF?

3 A Yes.

4 Q What were they listening to music on?

5 A Headphones.

6 Q Were they listening to them on their D6-A
7 computer or some other computer?

8 A We had a couple of networks and systems
9 next to us, so I think most of it was on NIPR but there
10 was I think some media files that had transitioned to
11 SIPR or -- but, I mean, I wasn't tracking specifically
12 who was on what system.

13 If people had headphones usually they were
14 listening to music with one of the capabilities that I
15 had in front of me. They didn't bring in devices or
16 anything like that.

17 Q Did you ever see music on the T-drive?

18 A T-drive was the SIPR share drive or -- I'm
19 sorry, I don't remember.

20 Q Well, from your memory are you aware of a
21 shared drive that was on the SIPR side?

1 A Yes.

2 Q Did you ever see music on that shared
3 drive?

4 A I think so. I'm not 100 percent sure. If
5 someone had told me no, there wasn't any, in fact, then
6 I could believe it. But it was so long ago that I
7 don't specifically remember that it was but I think it
8 was.

9 Q Do you ever recall the S6 removing --

10 A Yes.

11 Q -- an operating media from the T-drive?

12 A Yes.

13 Q What do you recall from that?

14 A I know people would post things on the
15 shared drive that shouldn't be there, whether it was
16 music or stuff not pertaining to the mission. S6 would
17 do whatever they do, querying search or look for that
18 type of stuff and do their best to pull it off.

19 Q Do you recall anyone within your unit ever
20 getting into trouble for having unauthorized media on
21 the T-drive or the shared drive?

1 A No.

2 Q Do you recall soldiers watching movies in
3 the T-SCIF?

4 A Movie clips, whether they were full movies,
5 but, yes, they were watching something.

6 Q And were these on the D6-A computer or some
7 other computer?

8 A Again, I think some of it was on the shared
9 drive, which was on SIPR and most was on NIPR.

10 Q Did you think it was appropriate to have
11 music and movies or any other media in the T-SCIF?

12 A Not at first. But it was my first intel
13 job. It was a different environment for me to be in so
14 I asked some questions trying to figure out what kind
15 of basis or expectation was. And seeing what I see
16 now, just seems like a common practice thing for people
17 to have headphones and listen to music and be in their
18 own world to accomplish what they need to accomplish.

19 Q You indicated that you didn't think it was
20 appropriate at first and then you asked some questions.
21 Who did you ask questions of?

1 A I don't remember any individuals. I just
2 remember wondering about it. The thought had crossed
3 my mind of, you know, can we bring this in or not.

4 I remember asking questions and there
5 wasn't an issue with us listening to the music in the
6 SCIF.

7 Q When you say -- I'm not asking I guess for
8 a specific person in mind, but who would you go to as
9 the night shift OIC to ask what was and was not
10 permitted in the T-SCIFs?

11 A Someone in the daytime when we would do
12 transitions and see everyone when they were there.

13 Q I know it's been a little while. But from
14 your memory, was there a firm understanding what was
15 and what was not permitted in the T-SCIF?

16 A Yes.

17 Q Why do you say that?

18 A Is this in relation to music or?

19 Q Music.

20 A Soldiers knew they were allowed to bring in
21 headphones, but they weren't allowed to come in with a

1 Walkman or something. They knew they were allowed to
2 listen to music if that's what they wanted to do.

3 Q And to make sure I understand your
4 testimony correctly, they were allowed to listen to
5 music on their D6-A computer?

6 A Is that separate from the SIPR computer?
7 No, that's not what I'm trying to say.

8 Q Let me back up then.

9 A Okay.

10 Q The D6-A computer, was that a -- do you
11 know what the D6-A computer?

12 A Yes, but I believe that that system or
13 software is separate from the SIPR and from the NIPR
14 computers.

15 Q Why do you believe that?

16 A It had a separate server box. It was, I
17 mean, it was a company type software program and it was
18 only as good as everyone around it or as much as
19 everybody else used it, so.

20 Q Okay. So from your memory there was a D6-A
21 computer --

1 A I don't remember anybody listening to music
2 from a D6 system if that's the question.

3 Q Let me go ahead. From your memory there
4 was a D6-A computer with a separate server?

5 A From what I understand the D6 and
6 completely separate than the SIPRNET work and NIPR
7 computers, they could be interconnected or the D6
8 systems could somehow be linked to the SIPR. But I
9 don't know -- I didn't know how the internet network
10 was established.

11 Q And then you said from your memory there's
12 SIPR computers as well; is that correct?

13 A Yes.

14 Q And if I understand you correctly, you
15 believe people were listening to music on the SIPR
16 computers but not the D6-A computers?

17 A Yes.

18 Q And did you ever ask anyone about listening
19 to music on SIPR computers?

20 A I can't remember.

21 Q Do you recall if anyone in the S2 section

1 put out any guidance on what was and was not permitted
2 on the SIPR computer?

3 A I can't remember any specifics.

4 Q Do you recall ever going to the S2 at the
5 time, Major Clawson, to ask about what was and was not
6 permitted in the T-SCIF?

7 A No.

8 Q Did you ask other soldiers that were
9 working underneath you?

10 A Yes, other soldiers, leaders and people
11 that worked within the shop, yes.

12 Q Was there a general understanding of what
13 was and was not permitted?

14 A Yes.

15 Q And what was the general understanding?

16 A That soldiers could listen to music. I
17 think that people were aware that there might have been
18 music on the SIPR computers but it wasn't bothering or
19 affecting anybody and if a soldier were continuing to
20 work and get done what they needed to get done and
21 listen to music, then that wasn't a concern, it didn't

1 become an issue. There's other things to kind of
2 concern ourselves with at that time.

3 Q Do you know whether or not that was also
4 approved by the S6?

5 A I don't know.

6 Q I want to ask you a few questions about
7 what an analyst could or could not look at on the
8 SIPRNET. Okay?

9 Do you recall if the S2 section posted any
10 rules on what an analyst could and could not look at on
11 the SIPRNET?

12 A No.

13 Q Do you recall any guidance whatsoever on
14 what you could and couldn't look at on the SIPRNET?

15 A Soldiers had authorization to -- when I say
16 soldiers, I mean the 35 Foxes or the all-source
17 analysts, had user names and passwords to query
18 databases and software programs that they would use to
19 consolidate information from different ways to kind of
20 put together and consolidate that information and
21 translate it into some sort of meaningful intelligence.

1 So they had a lot of, reach a lot of different
2 databases and places to access the information that
3 they could get if they needed to.

4 Q For the time that you were working in the
5 T-SCIF, did you ever work off of a D6-A computer?

6 A I don't think I did. I might have but I
7 don't remember working off a D6 system.

8 Q For the time that you were the night shift
9 OIC, what work did you do at night? What did you
10 actually do?

11 A I mostly read as many of the summarized
12 reports and things that were coming out. Made sure
13 things were getting consolidated for morning updates,
14 evening updates and just trying to track a lot of what
15 was going on in the area that I was going.

16 I mean, every day-to-day event that
17 happened on the ground and what the dynamic was with
18 the people and the relationships, everything involved
19 specifically in southern Baghdad. That was my main
20 concern.

21 Q Would it be fair to say that you were

1 focused then on the job that you were going to go to?

2 A Yes.

3 Q I now want to ask you a couple questions
4 about PFC Manning and his work performance as an
5 analyst to the extent that you saw that. Okay?

6 Did you have any ability to gauge him in
7 comparison to other analysts that you had in the shop?

8 A I didn't work directly with him but just
9 being there in the room and seeing how everybody kind
10 of handled themselves in the work that they were tasked
11 to, I would say yes, even though it was a short
12 duration of time.

13 Q And based upon what you could see, what
14 were your observations?

15 A That he accomplished the work and the
16 things that were asked of him to do and if somebody
17 needed something, say for a briefing or something, that
18 was a PowerPoint or something that needed to get done
19 in a haste that they might send it to him and he could
20 get it done.

21 MR. COOMBS: Thank you, Captain Keay.

1 THE COURT: Cross-examination?

2 MR. WHYTE: One moment, Your Honor.

3 CROSS-EXAMINATION BY MR. WHYTE:

4 Q Good afternoon, Captain Keay. You
5 testified that you checked in regularly with the
6 soldiers when you were the night OIC?

7 A The three that was on the shift with me?

8 Q Yes.

9 A I guess depends how you define regularly.
10 I would interact with them from time to time, yes.

11 Q Most nights when you were there?

12 A Yes.

13 Q And you would ask them what projects they
14 were working on?

15 A Sometimes yes; sometimes no.

16 Q And you didn't observe any of them backing
17 up entire databases?

18 A No.

19 Q You didn't observe them backing up entire
20 databases on CDs?

21 A No.

1 Q When you checked in, you would know what
2 they were working on but you didn't see what else they
3 were doing on SIPRNET?

4 A Correct.

5 Q So you would see -- you would talk to PFC
6 Manning, but you didn't see what he was doing the
7 entire time?

8 A Correct.

9 Q And you checked in with him for brief
10 intervals?

11 A Yes.

12 Q So he was working on his own for most of
13 the time?

14 A Yes.

15 Q Do you know what Wget is?

16 A I'm sorry?

17 Q Do you know what Wget is?

18 A No.

19 Q You signed a user agreement to go into the
20 SCIF?

21 A Yes.

1 Q Did that user agreement forbid removing
2 classified information from the SCIF?

3 A Yes.

4 Q Were soldiers allowed to take classified
5 information from the T-SCIF to, for their own personal
6 use?

7 A No.

8 MR. WHYTE: Thank you.

9 THE COURT: Redirect?

10 MR. COOMBS: No, Your Honor.

11 EXAMINATION BY THE COURT:

12 Q So Captain Keay, just to make sure I
13 understand your testimony, your time as the night shift
14 NCOIC was approximately from when to when?

15 A As OIC, ma'am, it was mid November,
16 sometime in December, probably mid December.

17 Q Is that your actual title?

18 A If it was, I don't think I remember -- I
19 didn't think I really had a job. I was the S2X but I
20 didn't have a specific title. There's a few positions
21 that are kind of laid out with the linear of BCT. I

1 was kind of an additional O3 Captain that was going
2 down to replace somebody else in a separate location.

3 Q When you were there on the night shift, you
4 were the senior person?

5 A Yes, yes, ma'am.

6 Q Did anybody tell you, any of your
7 supervisors tell you what that entailed with respect to
8 the junior soldiers also on the night shift?

9 A No. I think I had a general idea. It was
10 kind of a different environment in the fact that each
11 soldier was working under different groups with
12 different teams and I was not involved in one of those
13 individual teams.

14 So it was an interesting dynamic, I guess.

15 Q So I guess other than the inherent duties
16 that would come along with being the senior person, you
17 didn't have any formal supervisory type duties with
18 respect to these soldiers or did you?

19 A No. I mean, I don't remember doing any
20 counselings or anything like that. They were, again,
21 kind of involved in their teams. People knew that I

1 was leaving. It was just a matter of how soon or not
2 so soon. So --

3 Q If one of the soldiers wanted to go
4 anywhere or do anything during the night shift, they
5 wanted to go to the gym, for example, did they have to
6 come ask you and tell you where they were going?

7 A Yes, that was kind of an expectation I
8 think we all had and I asked for absolutely. To kind
9 of make sure people were where they were supposed to be
10 in case anything happened.

11 THE COURT: Any follow-up based on that?

12 MR. COOMBS: No, Your Honor.

13 MR. WHYTE: No, Your Honor.

14 THE COURT: Temporary or permanent excusal?

15 MR. COOMBS: Permanent, Your Honor.

16 MR. WHYTE: Permanent, Your Honor.

17 THE COURT: Captain Keay, you're
18 permanently excused.

19 You're free to go or you can stay here in
20 the courtroom.

21 MR. COOMBS: Your Honor, the defense calls

1 Ms. Lauren McNamara.

2 MR. FEIN: The United States asks for a
3 brief recess to bring Ms. McNamara from outside.

4 THE COURT: How brief do you need?

5 MR. COOMBS: 10 minutes.

6 THE COURT: Any objection?

7 MR. COOMBS: No.

8 THE COURT: Court in recess until 20
9 minutes after 4:00.

10 (There was a break in the proceedings at 4:10
11 p.m. and testimony resumed at 4:23 p.m.)

12 THE COURT: Court is called to order.

13 Major, please account for parties.

14 MR. FEIN: All parties present with the
15 exception of Captain von Elten and Whyte are absent.

16 Captain Morrow and Overgaard are present.

17 THE COURT: Are you ready to proceed?

18 MR. COOMBS: Yes, Your Honor. The defense
19 calls Ms. Laura McNamara to the stand.

20 Whereupon,

21 LAURA MCNAMARA,

1 called as a witness, having been first duly sworn to
2 tell the truth, the whole truth, and nothing but the
3 truth, was examined and testified as follows:

4 MS. OVERGAARD: You are Ms. Laura McNamara
5 of Winter Springs, Florida

6 THE WITNESS: Yes.

7 DIRECT EXAMINATION BY MR. COOMBS:

8 Q Ms. McNamara, you recently changed your
9 name; is that correct?

10 A Yes.

11 Q What was your previous name?

12 A Zachary Antolak.

13 Q When did you change your name?

14 A January 3rd, 2013.

15 Q Why did you change your name?

16 A Because I'm a woman and I wanted a name
17 that reflected that.

18 Q In February of 2009 were you contacted by
19 PFC Manning?

20 A Yes.

21 Q How did he contact you?

1 A He contacted me through AOL Instant
2 Messenger.

3 Q Over what period of time did the two of you
4 communicate via AOL Instant Messenger?

5 A From February 2009 to August 2009.

6 Q Did you know PFC Manning before this time?

7 A I did not.

8 Q Do you know why PFC Manning reached out to
9 you?

10 A He had found me through my YouTube videos
11 and he wanted to talk to me.

12 Q What were the general topics of your
13 YouTube videos?

14 A I discussed subjects such as atheism,
15 religion, politics, civil rights, and sometimes
16 mathematics and computer science information theory.

17 Q With regards to your conversations with PFC
18 Manning, what time period did they cover?

19 A From February 2009 to August of 2009.

20 Q Do you know why they stopped in August of
21 2009?

1 A I had changed my AOL Instant Messenger user
2 name and I fell out of contact with him.

3 Q What in general were the topics of your
4 discussion with PFC Manning during that time period of
5 February 2 to August of 2009?

6 A We often talked about --

7 MS. OVERGAARD: Objection, hearsay.

8 THE COURT: It is not a hearsay basis.

9 MR. COOMBS: I'm just saying in general are
10 the topics, Your Honor. I'm not asking for
11 specification, just broadbrush.

12 THE COURT: I'll overrule it for now. Go
13 ahead.

14 A We often talks about politics, global
15 affairs, Private Manning's life before then and what
16 his job involved.

17 Q Now, with regards to the conversations, how
18 did you view the nature of your conversations with PFC
19 Manning?

20 A We were just a couple of people talking
21 about our lives and he just shared various experiences

1 and interests.

2 Q What was it about the conversations with
3 PFC Manning that made you want to continue your
4 dialogue with him?

5 A Well, he often had interesting things to
6 say about his job and what that entailed and his
7 interest in politics, world affairs and things like
8 that and he seemed to have some very well informed and
9 complex opinions.

10 Q Do you know why PFC Manning would choose to
11 open up to you on Instant Messenger?

12 A It seemed like he just wanted someone to
13 talk to about these things, sort of on the same level
14 and I assume that he saw me as someone who would also
15 be interested in these things and able to talk about
16 them in that way.

17 Q Did you save the content of your
18 conversations?

19 A Yes, I did.

20 Q How did you do that?

21 A My AOL Instant Messenger client

1 automatically saved the logs.

2 Q Showing you what's been marked as Defense
3 Exhibit Romeo for identification and previously shown
4 to the government.

5 I'm handing you what's been marked as
6 Defense Exhibit Romeo for identification. Do you
7 recognize that?

8 A Yes.

9 Q How do you recognize that?

10 A These are my logs with Private Manning.

11 Q Over what period of time do these logs
12 capture your conversations with PFC Manning?

13 A February of 2009 to August of 2009.

14 Q Does Defense Exhibit Romeo for
15 identification capture your complete conversations with
16 PFC Manning?

17 A Yes.

18 Q Is Defense Exhibit Romeo for identification
19 substantially the same or in substantially the same
20 condition as the IM logs that you had from your
21 computer?

1 A Yes.

2 MR. COOMBS: At this time defense moves
3 into evidence Defense Exhibit Romeo for identification.

4 MS. OVERGAARD: The government objects to
5 hearsay but not to authenticity.

6 THE COURT: You have a hearsay objection
7 but not to authenticity; is that correct?

8 MS. OVERGAARD: Yes, ma'am.

9 THE COURT: Little louder.
10 May I see these, please? I'm going to take
11 a look through this and it's going to make me some
12 time.

13 What's the defense's response to hearsay?

14 MR. COOMBS: The 8033, then existing state
15 of mind.

16 THE COURT: For the entire thing?

17 MR. COOMBS: Yes, Your Honor.

18 THE COURT: Why where portions of this
19 exhibit highlighted?

20 MR. COOMBS: These are the portions that I
21 intend to go over with the witness that are part of the

1 8033 offer by the defense.

2 (Court reading.)

3 THE COURT: All right. Court is going to
4 need about 15 months to read this and see what, if any,
5 of it is hearsay.

6 Government, I want you to go through it,
7 too.

8 Are there parts and parcel of this that you
9 are objecting to or you think the entire thing is
10 hearsay?

11 MS. OVERGAARD: The entire thing, ma'am.

12 THE COURT: What about your response to the
13 8033? I assume you've got the highlighted portion of
14 the exhibit as well.

15 MS. OVERGAARD: Yes, ma'am. May we have a
16 moment?

17 THE COURT: Yes.

18 MS. OVERGAARD: Ma'am, we don't actually
19 have a copy of it.

20 THE COURT: We're in 15-minute recess. Why
21 don't we make a copy for the government as well so the

1 government knows what portion is highlighted.

2 What is the relevance of the rest of the
3 non-highlighted portion of any of this?

4 MR. COOMBS: Your Honor, the relevance
5 would be the general conversation that the witness had
6 with my client to put it into context, when you do read
7 the 8033.

8 THE COURT: Okay. Why don't we, let's go
9 ahead, let's make it a 20-minute recess actually.
10 Court is in recess until 4:50 or 16:50.

11 If you would please make the court and the
12 government a copy of this.

13 Government, go through it and let me know
14 your position on the 8033 piece of it.

15 The defense has stated that the rest of the
16 text in there is put in there for context. As you
17 know, 8033 talks about present state of mind, not
18 describing things in the past. So if you would with
19 your hearsay objection particularize it.

20 MS. OVERGAARD: Yes, ma'am.

21 THE COURT: Okay. Court is in recess.

1 (Court in recess.)

2 THE COURT: Court is called to order. Let
3 the record reflect all parties present when the court
4 last recessed are again present in the court as we're
5 going to have basically an argument with respect to the
6 piece of evidence.

7 Government, do you have any objections to
8 the witness remaining in the courtroom.

9 MS. OVERGAARD: No, ma'am.

10 THE COURT: Okay. All right. Government,
11 have you had a chance to look through appellate Exhibit
12 R for identification?

13 MS. OVERGAARD: We did, ma'am, and looking
14 through in particular the highlighted portions, the
15 government did not believe that any of the statements
16 went to the then existing state of mind of the accused.
17 So defense can articulate through the highlighted
18 sections if any of how any want to be in the then
19 existing state of mind.

20 THE COURT: All right. Now what about the
21 remaining sections that the defense introduced for

1 context. Has the government -- Mr. Coombs, the issues
2 I have with this is, there are some hearsay in the not
3 highlighted portions that you have here. We'll go
4 through the highlighted portions.

5 So there are ways we can do this. We can
6 go page-by-page and look at the hearsay versus the
7 non-hearsay and go through redactions which will be an
8 extensive process.

9 MR. COOMBS: Your Honor, I might have
10 another solution. What I could do is, I don't intend
11 to go through every highlighted portion with the
12 witness. I could go through the highlighted portions.
13 The government could have a standing 8033, excuse me,
14 hearsay objection. I can articulate for each one why I
15 believe it's then existing state of mind for plan
16 motive and why it's relevant.

17 Then the court, I can work off of the
18 exhibit with the witness to point out what portions the
19 witness is relying upon based upon the memory and also
20 the conversation.

21 And then we would be offering at that point

1 just the witness' testimony. So I wouldn't have to
2 admit the exhibit.

3 THE COURT: Government, is it procedural,
4 what they are saying that I just heard is, they're no
5 longer offering Defense Exhibit Romeo for
6 identification. They're going to go through the
7 witness, the particular highlighted portions.

8 MS. OVERGAARD: Ma'am, if the court
9 determines that some of the particular highlighted
10 portions are indeed admissible under 8033, then the
11 government may withdraw its objection to surrounding
12 information.

13 THE COURT: Let's look at the highlighted
14 portions. Let's go through.

15 MR. COOMBS: Your Honor, it may be helpful
16 to just orient you to the highlighted portions that we
17 intend to go over with the witness so page 4 would be
18 the first.

19 So if you wanted, I could go through my
20 direct with the witness. The government could have a
21 standing hearsay objection. I don't believe my

1 questions will take very long to go through. Then I
2 can articulate any 8033 bases.

3 THE COURT: Let's try it that way. As I
4 went through there were a few of these that I don't
5 believe 8033 applies but there's others I do believe.
6 Go ahead. Standing objection.

7 MR. COOMBS: Yes, Your Honor.

8 MS. OVERGAARD: Ma'am, if there are some
9 that you think are admissible under 8033, if the
10 government is aware of those, then we may withdraw our
11 objection altogether depending on the context
12 surrounding the ones that the court believes is
13 admissible.

14 MR. COOMBS: So I can go through with the
15 witness my questions and then the government can make
16 the determination if they have an objection or not.

17 THE COURT: Are you going to go in
18 chronological order of the pages?

19 MR. COOMBS: For the most part, ma'am.
20 There is some movement. It's more by topic. But I
21 will have the witness elicit the information and

1 identify where in the conversation that information is
2 from. And roughly around eight questions. As we go
3 through that, then, at the conclusion of that I can
4 articulate the 8033 basis if the government still has
5 an objection.

6 THE COURT: All right. Go ahead.

7 BY MR. COOMBS:

8 Q I'm handing the witness what's been marked
9 as Defense Exhibit Romeo for identification.

10 Ms. McNamara, during your conversation with
11 PFC Manning, did you ever have a conversation about the
12 books and information that PFC Manning was reading at
13 the time?

14 A Yes.

15 Q And during that conversation did he
16 indicate to you how he intended to use that information
17 that he was learning from the books that he was
18 reading?

19 A Yes.

20 Q And what did he indicate to you?

21 A He suggested that he wanted to go into

1 politics that. He wanted to learn more about
2 philosophy and various other topics.

3 Q And what did he intend to use that
4 information for?

5 A I suppose to improve his own knowledge and
6 just improve his understanding of the world and to help
7 people as well and enter with political sphere to
8 affect the change he was interested in.

9 Q Now, I want to direct your attention to
10 page 4 of Defense Exhibit Romeo. Do you see in that
11 section where he talked about delving more into
12 philosophy books?

13 A Yes.

14 Q And can you read the section?

15 A 8:07 p.m. bradass87 same thing with me, I'm
16 reading a lot more. Delving deeper into philosophy,
17 arts, physics, biology, politics than I ever did in
18 school. What's even better with my current position is
19 I can apply what I learn to provide more information to
20 my officers and commanders and hopefully save lives. I
21 figure that justifies my sudden choice to this.

1 Q So stop there.

2 MR. COOMBS: Your Honor, for this one the
3 8033 purpose would be for plan motive for what he was
4 intending to do with the information that he was
5 learning to help his unit. That was his plan and
6 motive. We believe this goes towards the Article 104
7 defense and also corroborates statements made in PE30
8 which is the chat conversations with Adrian Lamo who as
9 to this overall motive.

10 THE COURT: All right. Government, I don't
11 have a relevance objection. I have a hearsay
12 objection. So the 8033, why do you believe that that
13 does not go towards a future state of mind? Or then
14 existing state of mind?

15 MS. OVERGAARD: A general statement about
16 what the accused is reading, that he thinks he can
17 apply to his officers and commanders and hopefully save
18 lives, it just -- it doesn't seem to be relevant to the
19 knowledge portion of --

20 THE COURT: So now I do have a relevance
21 objection?

1 MS. OVERGAARD: Yes, ma'am. On top of the
2 hearsay objection.

3 THE COURT: All right. The court notes the
4 time that this was made. I mean, that goes -- I'm
5 going to overrule the relevance objection. It goes to
6 weight.

7 The hearsay objection the court finds that
8 that does fall under 8033.

9 Go ahead.

10 BY MR. COOMBS:

11 Q Now, during your conversations did PFC
12 Manning ever talk about the lives that he was concerned
13 about trying to save?

14 A Yes.

15 Q What did he say about the lives that he was
16 concerned about trying to save?

17 A He said that he was concerned with saving
18 the lives of families in foreign countries and other
19 noncombatants and just the families of soldiers and
20 soldiers themselves and making sure they got home safe.

21 Q And directing your attention to page 6 of

1 the Exhibit Romeo for identification, you see where he
2 discusses that?

3 A Yes.

4 Q And can you read that?

5 A 8:57 p.m. I'm more concerned about making
6 sure that everyone soldiers, Marines, contractors, even
7 the local nationals get home to their families.

8 MR. COOMBS: Your Honor, would this be the
9 same 8033 basis? Again goes to more 104 and
10 additionally goes to corroborating statements of PE30.

11 THE COURT: The court finds that that also
12 falls under 8033. Go ahead.

13 BY MR. COOMBS:

14 Q Did he ever relate to you the value that he
15 placed upon human life?

16 A Yes.

17 Q And what did he say about that?

18 A He considered human life to be valuable
19 above all.

20 Q And you, turning your attention to page 30.
21 Defense Exhibit Romeo.

1 Do you see where he makes that statement?

2 A Yes.

3 Q Can you read that?

4 A 1:28 a.m. Since I place value on people
5 first, 1:31 a.m., my personal value to things in order,
6 dirt, rock, ice, single cell organism, plants, manly
7 objects, various animals, mammalian animals, people.

8 MR. COOMBS: Same basis, Your Honor.

9 THE COURT: All right. That's approaching
10 hearsay, but I'll admit it just for purposes of state
11 of mind.

12 MR. COOMBS: Thank you.

13 BY MR. COOMBS:

14 Q Did PFC Manning ever indicate his
15 intentions to enter into politics?

16 A Yes.

17 Q What did he say about that?

18 A He said that after he got out of the
19 military he hoped to enter politics and effect change
20 from there --

21 MS. OVERGAARD: If I may, ma'am, at this

1 point, the government based on the court's
2 determinations would withdraw the hearsay objections to
3 the entire thing.

4 THE COURT: So you've got no objection to
5 Defense Exhibit Romeo's admission?

6 MS. OVERGAARD: No, ma'am.

7 THE COURT: All right. Defense Exhibit
8 Romeo for identification is admitted.

9 MR. COOMBS: I'm handing Ms. McNamara Romeo
10 exhibit. Handing Defense Exhibit Romeo back to the
11 witness.

12 BY MR. COOMBS:

13 Q Again, can you turn to page 5? Can you
14 read the portion where PFC Manning talks about wanting
15 to enter into politics?

16 A Page 8:25 p.m. My plan is pretty simple
17 but vague. Get credentials, nice ones, ones that make
18 it difficult for really creepy conservative people to
19 attack, then jump into politics.

20 Q Did PFC Manning ever talk to you about how
21 he viewed the military?

1 A Yes.

2 Q What did he say?

3 A He said that he viewed the military as an
4 organization made of diverse array of people and while
5 it wasn't always perfect, he viewed it as overall a
6 positive force.

7 Q And can you turn to page 11 of the
8 document. Can you show where on page 11 his view of
9 the military?

10 A 10:10 p.m., I actually believe what the
11 Army tries to make itself out to be. A diverse place
12 full of people defending the country, male, female,
13 black, white, gay, straight, Christian, Jewish, Asian
14 old or young, it doesn't matter to me. We all wear the
15 same green uniform. But it's still a male dominated
16 Christian right oppressive organization with a few
17 hidden gems of diversity.

18 Q Did PFC Manning ever talk to you about
19 seeing issues in black and white or shades of gray?

20 A Yes.

21 Q What did he say about that?

1 A He said that certain issues didn't always
2 have easy black or white, yes or no answers and that
3 there were various shades of gray and nuance involved.

4 Q Can you turn to page 13. Can you indicate
5 where on that page that conversation?

6 A 10:40 p.m. Sometimes I wish it were all
7 black and white like the media and politicians --

8 THE COURT: Just a minute. Turn on the
9 mic.

10 BY MR. COOMBS:

11 Q Can you show where on page 13 PFC Manning
12 talks about the same issue and shades of gray?

13 A 10:40 p.m., sometimes I wish it were all
14 black and white like the media and politicians
15 presented, him, he's the bad guy, and oh, he's the good
16 guy. It's all shades of blurry gray.

17 MS. OVERGAARD: Retrieving Defense Exhibit
18 Romeo from the witness.

19 Thank you, Ms. McNamara.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION BY MS. OVERGAARD:

1 Q On direct you said that PFC Manning
2 mentioned politics?

3 A Yes.

4 Q Did he also talk about activism?

5 A Yes, he did.

6 MS. OVERGAARD: I'm retrieving Defense
7 Exhibit Romeo and handing it back to the witness.

8 BY MS. OVERGAARD:

9 Q Could you look specifically at 21 February
10 at 8:26:53?

11 THE COURT: What page is that?

12 MR. COOMBS: Page 5, ma'am.

13 Q Could you just tell us what bradass87 said?

14 A 8:26 p.m. activism is fun.

15 Q How about the next line?

16 A 8:27 p.m., it doesn't do much good unless
17 you get heard, however.

18 Q And then the next line?

19 A 8:30 p.m., worryingly terrorists are a form
20 of political activist however they recruit young people
21 with troubled lives, a sick family member, extremely

1 poor up bringing, et cetera, offer them a monetary
2 solution, take them into a camp, give them psychoactive
3 drugs, psychologically drug them for many months, give
4 them explosive jacket or rigged vehicle, give them
5 heavy doses of uppers to send them along their way to
6 try to kill themselves. If they go through with it,
7 which is what the uppers are supposed to do.

8 Q Then skipping down to the 8:35:53, can you
9 tell us what that says?

10 A 8:35 p.m., we try our best to keep it from
11 being a tragedy, that's what all the infrastructure,
12 schools, elections and military training out there is
13 for.

14 Q You also said you talked a little bit about
15 some of the good and bad things about the military?

16 A Yes.

17 Q And specifically did you -- could you look
18 at 906 or actually could you look at 9:03:07 p.m.?

19 A Yes.

20 Q And that is page -- 9:03:07, page 7. Can
21 you tell us what that says?

1 A 9:03 p.m., military is all F'd up,
2 contracts with close sourced developers with
3 incompatible software drives me nuts.

4 Q Can you skip down to 9:07:52 p.m. and tell
5 us what that says?

6 A 9:07 p.m. but luckily I use my DC contacts
7 from Starbucks and get the word out to those higher up
8 in the chain.

9 Q And you said you talked about political
10 issues. Do you remember talking about Guantanamo Bay?

11 A Yes.

12 Q And do you know what the accused said about
13 that and specifically looking at 10:28:59?

14 A Yes.

15 Q Could you just tell us what that says?

16 A 10:28 p.m., question, Guantanamo Bay, the
17 closure is good, but what do we do about the detainees.

18 Q And how about the next line?

19 A 10:29 p.m. What I want to know is are
20 these people literally so dangerous that they must be
21 kept in a location outside the country.

1 Q Then could you skip down to 10:33:01?

2 MR. COOMBS: Just for the record, Your
3 Honor, the last section was actually by Ms. McNamara.
4 I just want to highlight that.

5 Q So could you state Bradass 10:33?

6 A Well, some of them are actually pretty
7 dangerous indeed. Some of them weren't dangerous
8 before but are now in fact dangerous because we
9 imprisoned them for so long, don't quote me on that for
10 the love of my career and others might -- and an
11 apology would easily fit back into society. Who's who,
12 worryingly, you can't really tell.

13 Q Then could you skip your comment and read
14 again bradass87 at 10:33:45?

15 A The reason that's difficult, the things we
16 have tried them on are classified information connected
17 with other pieces of classified information so if a
18 trial is done, it might have to be done in some kind of
19 modified trial where pieces of evidence which are
20 classified are presented only in a classified
21 environment.

1 Q Then finally at 10:33:59?

2 THE COURT: 10:33:59?

3 Q I'm sorry, ma'am, 10:38:59.

4 A Some of them are indeed dangerous and those
5 that have left have and someone against GTMO will tell
6 you, yes, many of those previously released even though
7 innocent before are quickly recruited as leading
8 figures for new wings of extremists groups.

9 Q Did you, you said you talked about foreign
10 affairs as well?

11 A Yes.

12 Q All right.

13 So now I'm skipping ahead to 8 March '09 at
14 2:38:40 a.m.

15 THE COURT: Page what?

16 Q That is page 32 of 39. Could you read that
17 for us?

18 A The entire page?

19 Q Oh no, I'm sorry. Just 2:38:40, that line
20 and then the next two lines?

21 A I've got foreign affairs on my mind

1 constantly now. Mexico spiral violence, Pakistan's
2 instability, North Korea's rhetorical posturing, blah,
3 blah, blah. One of the bad parts of the job, having to
4 think about bad stuff.

5 Q Could you just flip the page and read the
6 2:42:00 as well?

7 A Just read a State Department release.

8 Q Did the accused ever send you any
9 specification about his work?

10 A Not specifically.

11 Q Any of the work product that he did?

12 A No.

13 Q On 22 March at 11:26:35 which is page 33,
14 could you tell us what that says?

15 A I'm working on an incident tracker for my
16 unit to update the current one we have from the unit's
17 last deployment.

18 Q Then what follows?

19 A A URL which I believe links to Private
20 Manning's personal website.

21 Q Okay. One moment, please.

1 MS. OVERGAARD: Thank you, ma'am. No
2 further questions.

3 THE COURT: Redirect?

4 MR. COOMBS: No, Your Honor.

5 THE COURT: Temporary or permanent excusal?

6 MR. COOMBS: Permanent, Your Honor.

7 THE COURT: Any objection from the
8 government?

9 MS. OVERGAARD: No, ma'am.

10 THE COURT: Ms. McNamara, you are
11 permanently excused. You are free to go or you can
12 stay in the courtroom.

13 MR. COOMBS: I'm getting Defense Exhibit
14 Romeo from the witness.

15 Defense calls Colonel Morris Davis.

16 MR. MORROW: The United States would offer
17 we should probably recess for the night. The defense
18 offered him as an expert, the United States intends to
19 contest that. It will probably take more than an hour
20 and a half. We can start and maybe do cross tomorrow,
21 but.

1 THE COURT: Any objection to putting that
2 off until tomorrow?

3 MR. COOMBS: Whatever the court would like,
4 Your Honor.

5 THE COURT: Why don't we lay the foundation
6 for the expertise tonight.

7 MR. MORROW: No objection, Your Honor, if
8 that's what you want to do. I suspect the objections
9 will come somewhat early and often.

10 THE COURT: Well other than the fact that
11 it's getting a bit late, do the parties having any
12 objections with proceeding on with tonight, other than
13 the fact that it's a bit late?

14 MR. MORROW: No, Your Honor.

15 MR. COOMBS: No.

16 THE COURT: Do you want to take a recess
17 first?

18 MR. COOMBS: No.

19 MR. MORROW: We can take a recess later, I
20 guess.

21 THE COURT: Let's call the witness.

1 MR. COOMBS: The defense calls Colonel
2 Morris Davis.

3 (Pause in proceedings.)

4 MR. MORROW: Maybe we should have took the
5 recess.

6 THE COURT: All right. Let's take a break.
7 Ten minutes recess. Court is in recess until 10 of
8 6:00.

9 (Court in recess.)

10 THE COURT: The court is called to order.
11 All parties present. Mr. Coombs.

12 MR. COOMBS: Defense calls Retired Colonel
13 Morris Davis to the stand.

14 If you would, sir, walk up and turn and
15 face the trial counsel and raise your hand.
16 Whereupon,

17 RETIRED COLONEL MORRIS DAVIS,
18 called as a witness, having been first duly sworn to
19 tell the truth, the whole truth, and nothing but the
20 truth, was examined and testified as follows:

21 MR. MORROW: You are Colonel Retired Morris

1 Davis, Hansell, Virginia.

2 THE WITNESS: Hansell, Virginia.

3 DIRECT EXAMINATION BY MR. COOMBS:

4 Q Sir, you are the former chief prosecutor
5 for the Guantanamo military commissions?

6 A That's correct.

7 Q During your time as the chief prosecutor
8 you reviewed detainee assessment briefs?

9 A I did.

10 Q Are you familiar with the general content
11 of the detainee assessment briefs?

12 A Yes.

13 Q Did you review the charge in specification
14 9 of charge 2?

15 A Yes, I did.

16 Q Colonel Davis, are you prepared today to
17 tell us about the historical use of the detainee
18 assessment briefs in specification 9 of charge 2 and
19 how you used the detainee assessment briefs of the
20 prosecutor?

21 A I am.

1 Q You obtained your juris doctorate from
2 North Carolina Central University?

3 A In 1983.

4 Q Then you entered active duty in the United
5 States Air Force?

6 A Yes.

7 Q How long did you serve on active duty, sir?

8 A 25 years.

9 Q Your rank after retirement was Colonel?

10 A Colonel, yes.

11 Q You earned a master's of law from the U.S.
12 Army's Judge Advocate General School?

13 A I was in the 40th graduating class.

14 Q What year was that?

15 A 1992.

16 Q And did you specialize in a particular
17 area?

18 A It was -- I also had an LMN from George
19 Washington University in procurement law. So I
20 specialized in government procurement, but the LMN is
21 titled military law.

1 Q Now, you reference that you also got a
2 master's of law from George Washington you said that
3 was in procurement law?

4 A Yes, 1992.

5 Q And during your time on active duty, you
6 were the deputy commandant of the Air Force Law School;
7 is that correct?

8 A Yes, that's correct.

9 Q What were your primary duties in that
10 position?

11 A I served there previously as an instructor
12 where I taught government procurement law and fiscal
13 law from 1992 to 1995. I returned there in 2000 and
14 served as the deputy commandant until 2003 where I was
15 the interim commandant for a period of about five
16 months where it was general administrative
17 responsibility for the faculty curriculum and some
18 teaching responsibility.

19 Q As we mentioned, you were the chief
20 prosecutor for the Guantanamo military commissions?

21 A That's correct.

1 Q What were your primary duties in that
2 position?

3 A It was primarily assessing potential cases
4 at Guantanamo for prosecution before the military
5 commissions. I became a chief prosecutor in September
6 of 2005 and at that point we were operating under the
7 military order issued by President Bush in November of
8 2001.

9 There was some cases also in progress when
10 I came onboard. In addition to reviewing cases, I was
11 the head of the prosecution task force which by the
12 time I left, there were roughly 120 personnel, which
13 included judge advocates, military paralegals,
14 Department of Defense attorneys, CIA, FBI, Department
15 of Justice, NSA and other federal agencies that had an
16 interest in the matter.

17 Q When did you leave that position?

18 A It was in October of 2007.

19 Q And I guess after that you became the
20 director of the Air Force judiciary?

21 A Yes, I think the Army equivalent, criminal

1 law division, it was oversight responsibility for the
2 Air Force, military justice system.

3 Q Can you tell us what you did in that
4 position?

5 A Yeah. I had, there are about 365 personnel
6 that were assigned to the judiciary and it was
7 everything from the trial counsel and defense counsel
8 up through the appellate counsel, clemency, parole,
9 pretty much everything in military justice with the
10 exception of the trial judges and appellate judges.

11 Q When did you serve in that capacity?

12 A It was from October of 2007 -- I retired
13 October 1st, 2008 and I took terminal leave so it was
14 approximately June, I would say June of 2008.

15 Q And after that you became the assistant
16 director and senior specialist in the National Security
17 for the Congressional Research Service?

18 A That's correct.

19 Q And what is the Congressional Research
20 Service?

21 A Well, it's often billed as Congress' think

1 tank. It's a government agency that works directly for
2 Congress providing advice to them or whatever issue is
3 before the Congress. There are five research divisions
4 and I was the head of the largest which is foreign
5 affairs and defense and trade. That had about 95
6 personnel in the division.

7 Q When did you hold this position?

8 A From December of 2008 until December of
9 2009.

10 Q You then became the executive director and
11 counsel for Crimes of War Education Project?

12 A Correct.

13 Q And can you tell us about this
14 organization?

15 A Yes, this is a non-profit organization that
16 started, it was started by a group of journalists that
17 were involved in covering the war in Kosovo, who
18 literally were sitting around drinking beer and said if
19 the world understood there are laws that apply to armed
20 conflict not just anything goes, perhaps the atrocities
21 we witnessed in Kosovo could have been avoided. So

1 they started a process to try to educate the public on
2 the laws of war, they published a book, Crimes Of War,
3 What The Public Should Know.

4 Q What were your primary duties for this
5 organization?

6 A Primarily it was a small organization. I
7 was the executive director. So it was a lot of
8 administrative responsibilities, but also a good bit of
9 writing and speaking on international humanitarian law
10 issue.

11 Q How long did you serve in this capacity?

12 A Until the end, until December of 2011.

13 Q And you are currently a faculty member at
14 Howard University School of Law?

15 A Yes.

16 Q What subjects do you teach?

17 A I teach a first year course in legal
18 writing, a second year in appellate writing and
19 advocacy and second and third year course in national
20 security law.

21 Q When did you begin this position?

1 A In August of 2011.

2 Q What areas do you have for your research as
3 a professor?

4 A Most of my writing and speaking have been
5 in the area of national security. Primarily
6 Guantanamo, military commissions, the use of torture,
7 convention against torture and also the drone policy.

8 Q Have you written articles on national
9 security and the detention facility at Guantanamo?

10 A Yes.

11 Q How many articles in general have you
12 written?

13 A For news publications I would say 12 to 15
14 and for scholarly publications, Case Western University
15 International Journal, Northwestern law school's
16 journal, three or four journal type articles.

17 Q And what topics were covered in the
18 articles that were published for journals?

19 A Primarily Guantanamo military commission
20 related articles.

21 Q In addition to your teaching and research,

1 do you also serve as an expert commentator on national
2 security?

3 A Yes.

4 Q In what capacity do you serve as an expert
5 commentator on national security?

6 A The last few months I been on CNN, Al
7 Jazeera, RT America, the Glenn Beck network -- a
8 variety of different news organizations on a variety of
9 national security topics. Most recently over the
10 weekend on the Snowden case.

11 Q Have you ever been asked to speak on
12 national security?

13 A Yes.

14 Q And how many times?

15 A Several dozen times.

16 Q Have you ever been asked to speak on
17 Guantanamo?

18 A Yes.

19 Q How many times?

20 A Several dozen.

21 Q You were also asked to advise President

1 Obama's transition team on Guantanamo?

2 A Correct.

3 Q President's transition team was assigned to
4 work out Guantanamo's detainee policy?

5 MR. MORROW: Objection.

6 THE COURT: Yes.

7 MR. MORROW: Lack of personal knowledge.

8 THE COURT: Did you just say you advised
9 the foundation?

10 THE WITNESS: That was the question. I
11 hadn't answered it.

12 THE COURT: What was the question again?

13 Q Were you asked, first of all, were you
14 asked to advise the president's transition team on
15 Guantanamo?

16 A Yes.

17 Q And were you asked to -- basically the
18 president's transition team, that was the question,
19 ma'am, was assigned to work on the Guantanamo detainee
20 policy?

21 THE COURT: Were you aware of what the

1 president's transition team was doing?

2 THE WITNESS: Yes.

3 THE COURT: What's the bases of your
4 objection?

5 MR. MORROW: I'll withdraw it.

6 THE COURT: Go ahead.

7 Q When did you do this? When did you help --

8 A I don't recall the exact date. It was like
9 the last week of November, the first week of December
10 of 2008. So it would have been roughly six to eight
11 weeks before President Obama took office.

12 Q What were you asked to advise the
13 president's team on concerning Guantanamo?

14 A Well, I was invited, Jay Johnson, later
15 became the general counsel for the Department of
16 Defense contacted me and asked if I would come in and
17 meet with them at the Pentagon where they had been
18 provided a space to begin the transition process.

19 The other members were Rich Vermouth, an
20 attorney in Washington, during the first time of
21 President Obama's administration, I don't recall the

1 exact title, senior official at the State Department.
2 The third person, I don't recall the name, Vice
3 President Biden's legal adviser at the Senate who moved
4 with him to the White House. The three of them. They
5 asked me in for I guess about two hours to talk about
6 Guantanamo in general and I think for them it was
7 trying to kind of get their head around what they were
8 taking on as President Obama took office and the
9 political issues they were going to be confronting when
10 they took over responsibility for Guantanamo.

11 Q Have you ever been invited to testify
12 before Congress on matters related to Guantanamo?

13 A Yes.

14 Q In what capacity?

15 A Twice before the House Arms Services
16 Committee and hearings on the military commission --
17 first on the Military's Commission's Act of 2006 and
18 then in July of 2008 both before the House Arms
19 Services Committee.

20 Q Now, did you also attend President Obama's
21 National Security speech 23 May 2013?

1 A Yes.

2 Q Where was this at?

3 A It was held at National Defense University.

4 Q How did you come to attend that speech?

5 A I was invited by the White House to attend.

6 Q Have you ever held a security clearance?

7 A Yes.

8 Q What's the highest level that you held?

9 A I had a TSSCI and was right into several
10 special access program.

11 Q Do you currently have a security clearance?

12 A Yes.

13 Q And what is the level?

14 A Secret.

15 Q And I now want to ask you a few questions
16 about your experience with detainee assessment briefs
17 or DABs. What were the DABs primarily written for?

18 A It was written to advise command on, we
19 refer to them as baseball cards. It was a term in use
20 before I became chief prosecutor.

21 It was basically biographical information

1 about each of the detainees for the chain of command
2 to, I think have a window into the people that we were
3 detaining at Guantanamo.

4 Q Were they actually addressed to the chain
5 of command?

6 A I believe they're addressed to southern
7 command.

8 Q As the chief prosecutor did you review the
9 DABs?

10 A Yes.

11 Q Were the DABs useful in carrying out your
12 duties as the chief prosecutor?

13 A No.

14 Q Why not?

15 A They were so wildly inaccurate that they
16 were of no use to us. They were a reference tool if
17 you're interested in the person's name, where they were
18 from. That kind of thing.

19 But as far as any substantive value, it was
20 really the documents that were, the underlying
21 documents that were used to create the DABs were

1 useful. But the DABs themselves were, in general, sort
2 of wildly inaccurate. They weren't helpful to us.

3 Q When you, what did you primarily use the
4 DABs for then in your office?

5 A We didn't really use them. They were in
6 the -- we had no standard protocol. Each -- I was the
7 third chief prosecutor. So the process was in motion
8 before I got there. Colonel Fred Borke from the Army
9 was the first chief prosecutor. Colonel Bob Swan was
10 the second. I was the third.

11 There were a number of prosecutors assigned
12 to the prosecution office, the chief prosecutor. There
13 was no standard protocol on how they were directed to
14 compile a case file. Invariably the case files
15 included the detainee assessment brief.

16 Q Were the DABs viewed as being particularly
17 sensitive information by your office?

18 A No. Again, it was the underlying
19 documents, the intelligence documents and law
20 enforcement documents that were of importance to us,
21 not the detainee assessment brief.

1 Q Who prepared the information within each of
2 the DABs?

3 A The joint intelligence group at
4 Guantanamo --

5 MR. MORROW: Objection.

6 THE COURT: Yes?

7 MR. MORROW: Lack of personal knowledge.

8 THE COURT: Do you know who prepared the
9 DABs?

10 THE WITNESS: Yes.

11 MR. MORROW: Your Honor, he's the chief
12 prosecutor at the commission. If I allow him
13 (inaudible).

14 THE COURT: I'll go ahead and let you
15 explore that.

16 VOIR DIRE EXAMINATION BY MR. MORROW:

17 Q Colonel Davis, I just want to ask you a few
18 questions.

19 A All right.

20 Q Colonel Davis, you were the chief
21 prosecutor for the military commissions?

1 A Correct.

2 Q As a chief prosecutor your job was to
3 supervise the other prosecutors at the military
4 commissions?

5 A Yes.

6 Q And you did not supervise any intelligence
7 analysts?

8 A I didn't.

9 Q And you did not interact with the commander
10 of JTF-GTMO?

11 A Yes, I did supervise intelligence analysts.

12 Q You supervised intelligence analysts as a
13 chief prosecutor?

14 A Yes. We had a number of -- the task force
15 was not just prosecutors. It included law enforcement
16 agents, people from the CIA, from NSA. We also had
17 intelligence analysts, either from the government or by
18 government contract that were assigned to my team.

19 Q Now, you're referring to the criminal
20 investigation task force; is that correct?

21 A The prosecution task force included both

1 intelligence and law enforcement personnel.

2 Q It didn't include intelligence analysts
3 from the Joint Intelligence Group?

4 A No.

5 Q You did not supervise any of the intel
6 analysts in the Joint Intelligence Group?

7 A Correct.

8 Q This Joint Intelligence Group, to your
9 knowledge the Joint Intelligence Group was the group
10 that produced the intelligence analysts?

11 A Right.

12 Q And that JIG was part of the detention
13 operations of part of JTF --

14 A The JIG, the Joint Intelligence Group, fell
15 under the commander of JTF-GTMO. It was one of the
16 three groups that made up --

17 Q So you have the intelligence group, the
18 medical group and you have that --

19 A Interrogation.

20 THE COURT: What were the three groups?

21 MR. MORROW: The intelligence group, the

1 detention group.

2 A The medical group.

3 THE COURT: This is the Guantanamo task
4 force?

5 THE WITNESS: JTF Guantanamo, those were
6 the, it's alternate between admiral and general, but
7 the commander is responsible for those three groups
8 report to him.

9 THE COURT: Thank you.

10 Q And the Joint Intelligence Group was made
11 up of interrogators?

12 A Primarily.

13 Q Primary interrogators, some intelligence
14 analysts?

15 A And support personnel.

16 Q But again, all fell under the commander
17 JCF?

18 A Correct.

19 Q You were not the legal adviser to JCF?

20 A I was not.

21 Q That was a separate operation?

1 A Correct.

2 MR. MORROW: We renew our objection.

3 THE COURT: Question?

4 MR. COOMBS: Who prepared the information
5 in each of the DABs?

6 THE COURT: Do you know the answer to that
7 question?

8 THE WITNESS: I don't know the -- I can't
9 name individuals. I know they're prepared by the Joint
10 Intelligence Group, not the particular analysts that
11 prepared each report.

12 THE COURT: So what's your objection to the
13 witness testifying that the DABs are prepared by the
14 Joint Intelligence Group?

15 MR. MORROW: We'll withdraw the objection.

16 THE COURT: Proceed.

17 DIRECT EXAMINATION BY MR. COOMBS:

18 Q How did the group get their information
19 from the DABs?

20 A It was based on the underlying documents.

21 THE COURT: Answer that question. Do you

1 know how they obtained the information?

2 A I know what they were based upon, which
3 were the underlying documents, the law enforcement
4 interviews or the intelligence interviews or other
5 sources of information that had been funneled to
6 Guantanamo to the intelligence group on that particular
7 detainee and it was someone's responsibility then to
8 collect that information and prepare the overall, the
9 narrative assessment.

10 Q Based upon your review, how would you
11 characterize the information within the DABs?

12 A It was the generalized you know, background
13 information. We refer to them as baseball cards.
14 Biographical information about the detainees. It
15 didn't contain as the underlying documents, the sources
16 and methods that were used to acquire the information.

17 Q Were the DABs ever updated?

18 A Yes.

19 Q How so?

20 A If -- I can't give you a percentage of how
21 many were, but if there was new information that came

1 in to attain the assessment brief it may be updated
2 based on the new information. I can't say the
3 percentage but some were updated.

4 Q Based upon your review, did the DABs
5 contain any actual intelligence reporting?

6 A No. There's no actionable intelligence in
7 the detainee assessment groups. Actionable
8 intelligence was information that would be funneled
9 back out to the field or the intelligence community for
10 their operational purposes. The DABs here not useful
11 for that purpose.

12 Q Did the DABs that you reviewed contain any
13 names of intelligence sources?

14 A No.

15 Q Was the purpose of the DABs to incorporate
16 intelligence reporting and intelligence sources?

17 A I'm not sure. Can you --

18 Q Sure. Was the purpose of the DABs, the
19 detainee assessment briefs, to incorporate
20 intelligence, reporting intelligence sources?

21 A Oh, certainly intelligent sources were part

1 of the mix, including law enforcement and other pieces
2 of information but it was again a narrative biography
3 on each individual that came from a variety of sources.

4 Q As part of your job, did you participate in
5 substantive discussions about various detainees at
6 GTMO?

7 A Yes.

8 Q And in general what were those, who were
9 those discussions with?

10 A A variety of different levels. Obviously
11 the Guantanamo military commissions were and still are
12 a topic of much debate and so there were discussions
13 that, you know, highest levels of the Pentagon, the
14 Justice Department, the National Security Council and
15 other federal agencies that had an interest in the
16 matter.

17 Q What in general, again just in general,
18 were these discussions about with the various
19 organizations?

20 A There were certainly -- we didn't keep time
21 logs. I think if I had to categorize the biggest

1 percentage it was devoted to classified information and
2 efforts to get the information declassified.

3 There was discussions about, there was a
4 lengthy period of discussion about the high value
5 detainees. At the time I became chief prosecutor black
6 sites on whether they would be transferred to
7 Guantanamo and potentially prosecuted in military
8 commissions or whether they would go to Federal Court.
9 So there's a fairly wide ranging discussion on
10 different issues relating to the detainees.

11 There were a total of 779 men that were
12 ever detained at Guantanamo. My focus was on the ones
13 that we thought were potential to bring war crimes
14 charges against so it was a subset of the larger
15 population.

16 Q During those discussions, do you recall
17 anyone ever deciding information from the DABs?

18 A No.

19 Q Were you a original classification for the
20 DABs?

21 A No.

1 Q Did you ever conduct any meetings on how to
2 declassify information from Guantanamo?

3 A Yes. Numerous meetings. Again, as I said,
4 it was probably the largest percentage of my time was
5 devoted to the whole issue of classification and how to
6 get information declassified for potential use in the
7 military commission.

8 Q Why were you seeking to declassify
9 information?

10 A Well, two reasons. One is to provide, to
11 make the information available to the defense so they
12 could prepare for trial. I met with Senator Lindsay
13 Graham and John McCain in September 2006 and they were
14 working on the Military Commissions Act. Senator
15 Graham said it was fundamentally unAmerican --

16 MR. MORROW: Objection.

17 THE COURT: Sustained.

18 BY MR. COOMBS:

19 Q Without discussing the exact conversation?

20 A The concern was in order to have a
21 legitimate process, we need to be able to provide

1 information to the accused. Rather than exclude from
2 his trial and convict him in abstention. So we're
3 working to declassify information to make it available
4 to the defense and also our interest in having
5 transparency and allowing the public to have a window
6 into the trials at Guantanamo. So it was really those
7 two purposes.

8 Q And how often would you have these
9 declassification meetings?

10 A It varied. When I first became chief
11 prosecutor, the Under Secretary of Defense for
12 intelligence was Steve Cambone. I had, like, four
13 meetings with him. More often it was with John Smith,
14 a retired Army JAG who was his principal legal advisor
15 on attempting to come up with some process to get
16 information declassified.

17 After Mr. Cambone left, Jim Clapper
18 replaced him as Under Secretary of Defense for
19 Intelligence. I knew General Clapper. He's a retired
20 Air Force general and worked with him and his staff on
21 the same process. Eventually led to creation of a

1 declassification team.

2 You know, one outlet we could go to to
3 request information be declassified.

4 Q Did you ever seek to declassify the DABs?

5 A No.

6 Q Why not?

7 A They had no substantive use for the
8 military commissions.

9 MR. COOMBS: Your Honor, at this time the
10 defense request the court recognize Colonel Davis as an
11 expert under MRE702 as a general subject matter of
12 national security issues and on the Guantanamo retained
13 policy and on the information used in their detentions,
14 specifically the DABs.

15 MR. MORROW: First the national security
16 issues. The second.

17 MR. COOMBS: And on the Guantanamo detainee
18 policy and the information used in their detention
19 specifically the DABs. So there are two.

20 THE COURT: What was the second one again?

21 MR. COOMBS: The second one is on

1 Guantanamo detainee policy and information used in
2 their detentions, specifically the DABs.

3 MR. MORROW: One moment, Your Honor.

4 We would object on both cases (inaudible).

5 THE COURT: What grounds?

6 MR. MORROW: For national security issues
7 we object on the basis of relevance.

8 THE COURT: What is the relevance?

9 MR. COOMBS: Your Honor, the general area
10 for national security issues will be towards his
11 opinion on whether or not the DABs could, in fact,
12 cause damage.

13 MR. MORROW: Your Honor, response would be
14 that that's the province of an original classification
15 authority or someone with some experience in
16 classification or declassification actually making
17 decisions to classify and declassify information. Not
18 in the province of the lawyer.

19 THE COURT: How is this witness qualified
20 to make that determination?

21 MR. COOMBS: Yes, Your Honor. He has been

1 consulted, he teaches on the issue now. He has been
2 consulted on the issue specifically with Guantanamo
3 detainees by President Obama. He has spoken on the
4 issue multiple times. From the defense's perspective
5 he clearly meets the requirement under MRE702 as an
6 expert in the field both from knowledge of experience,
7 training and most recently being sought out not only by
8 the president and his transition team but also Congress
9 to speak on the issue.

10 MR. MORROW: Your Honor, if I may, I
11 believe he was sought out in the testimony at least at
12 this point is that Colonel Davis was at one time in
13 late 2008 sought out for advice on GTMO. That doesn't
14 necessarily make him a national security expert. He
15 was invited to attend a speech by the president on
16 national security but that doesn't necessarily make him
17 a national security expert and I believe that also
18 happened in the 2009 timeframe according to Colonel
19 Davis' testimony.

20 THE WITNESS: It was actually May of 2013.

21 MR. MORROW: Same basis still.

1 THE COURT: This national security issue,
2 is this expertise going to be moving to the DABs?

3 MR. COOMBS: That is correct. And just
4 Guantanamo in general.

5 THE COURT: That's what I'm saying, not
6 other national security issues that have nothing to do
7 with Guantanamo.

8 MR. COOMBS: That is correct, Your Honor.

9 THE COURT: Do you want to voir dire the
10 witness?

11 MR. MORROW: Yes, Your Honor.

12 My objections to the other basis of
13 expertise GTMO trainee policy and specifically DABs,
14 again that would be experience, knowledge. So those
15 are the experience and knowledge objections.

16 THE COURT: So your objection is experience
17 and knowledge with respect to detainee, GTMO detainee
18 policy and information used in the detentions.

19 MR. MORROW: No, I believe he said
20 specifically the info used in their detention,
21 specifically the DABs.

1 I think Colonel Davis can speak to
2 information that was used by the Office of Military
3 Commissions, but I don't believe he can speak to
4 information that was used by detention folks or the
5 intelligence folks or anyone else at JTF-GTMO.

6 THE COURT: Go ahead and voir dire the
7 witness.

8 VOIR DIRE EXAMINATION BY MR. MORROW:

9 Q Colonel Davis, I want to talk about your
10 experience first. Your career progression.

11 You attended college and law school and
12 then joined the Air Force; is that correct?

13 A Correct.

14 Q And you went straight from law school to
15 the JAG?

16 A Yes.

17 Q And prior to joining the Air Force JAG
18 Corp., did you have any experience with the military?

19 A No.

20 Q Did you have any experience in the
21 intelligence community?

1 A No.

2 Q Had you dealt with classified information
3 in any context?

4 A No.

5 Q What was your first job in the Air Force?

6 A I was the chief of the military justice at
7 Patrick Air Force Base, Florida.

8 Q And how long were you the chief of military
9 justices?

10 A About 18 months.

11 Q And what time frame was that?

12 A It would have been from, approximately
13 December of 1983 to the summer of 1985, I believe.

14 Q And where did you go from there?

15 A I became -- I'm not sure if the Army has
16 the comparable, the area defense counsel. I became the
17 area defense counsel for Patrick Air Force Base.

18 Q And neither of those first two jobs did you
19 deal with issues of national security. I mean, you
20 were in the military but did you deal specifically with
21 issues of national security?

1 A No, my responsibilities were military
2 justice related. I mean, it dealt with some personnel
3 that were involved in intelligence issues but it was
4 on, you know, criminal law matters.

5 Q And after those jobs, so those were
6 military jobs, where did you go from there?

7 A I moved to Bolling Air Force Base in
8 Washington. Again, I don't know if the Army has a
9 program we have called circuit trial counsel. We
10 travel. Then it was called the First Circuit.
11 Basically the northeastern United States. I was a sure
12 cut prosecutor beginning in January of 1988.

13 Q And where did you go after that again?

14 A From there I went to our appellate
15 government I think is comparable. I was an appellate
16 government counsel until I went to the grad course at
17 the Army JAG school starting in the summer of 1991.

18 Q And your area of emphasis, the JAG school
19 was government procurement law?

20 A Yes, I was, my certificate says master's of
21 law and military law, concentration in government

1 procurement.

2 Q Once you were done with, after that where
3 did you go from there?

4 A I went to the Air Force JAG school.

5 Q You taught government procurement law?

6 A Yeah, primarily government procurement and
7 fiscal law.

8 Q How long did you teach government
9 procurement law and fiscal law there?

10 A Summer of 1992 until the summer of 1995.

11 Q And so it was '95. So where did you go
12 from there?

13 A From there I went to Columbus Air Force
14 Base, Mississippi, where I was a staff JAG --

15 Q I didn't ask before, but wrap up all your
16 previous assignments at that point. Did any of those
17 assignments involve issues of national security outside
18 of, you know, you're obviously in the military and that
19 sort of has a broad national security connotation, but
20 otherwise, did you speak in the areas of national
21 security?

1 A No. The only, actually the only time I was
2 really involved with classified information at that
3 period, deployed to operations southern watch where I
4 was a staff judge advocate for the 409th operations
5 group provisional and also the interim staff judge
6 advocate for the joint judge training mission op for
7 the period --

8 Q You were the staff (inaudible)?

9 A Yes.

10 Q And that was really advising sort of the
11 commanders or is that -- what was the operation there?

12 A The joint mission was our corporative
13 effort with the Saudi government. Military to military
14 cooperate with the Saudi government. My involvement
15 would have primarily been related to the (inaudible)
16 task that were coming in.

17 Q From that job where did you go?

18 A I went to Columbus, Mississippi where I was
19 the staff judge advocate for the Air Force base.

20 Q What was the mission at the Columbus Air
21 Force base?

1 A Undergraduate pilot training base.

2 Q Like top gun?

3 A They go on from there. This is directly
4 into pilot training. It's year long program in
5 undergraduate and then they would go on to the more
6 advanced.

7 Q And you would be the legal adviser on the
8 commandants?

9 A I took commander of the wing.

10 Q From there where did you go?

11 A I moved to, I became the staff judge
12 advocate for 7th bomb wing in Texas.

13 Q What was their mission?

14 A It was a B1, for the first year it was a
15 nuclear mission and it converted to conventional
16 weapons about midway through my tour there.

17 Q And when you were in those last few jobs,
18 were you ever asked to speak in the areas of national
19 security?

20 A No.

21 Q Did you take any additional courses in

1 national security?

2 A No.

3 Q Did you attend any conferences related to
4 the issues of national security law?

5 A Generally. The type of military courses
6 that JAGs go to throughout their career. I can't go
7 back and tell you specifically when or exactly what the
8 course was.

9 Just the general types of education courses
10 that JAGs would attend.

11 Q So from DIAS (phonetic) where did you go
12 from there?

13 A From DIAS I went back to the JAG school and
14 deputy commandant.

15 Q As deputy commandant you were sort of the
16 deputy dean of students?

17 A Yes.

18 Q And did you have teaching duties there?

19 A Yes.

20 Q What did you teach when you were the deputy
21 commandant?

1 A I was the course director -- if you've ever
2 been to (inaudible) it was a college campus. We also
3 provide instructions in the other schools. I was the
4 course director for military commander of the -- kind
5 of a broadbrush for --

6 Q So nonjudicial punishment?

7 A Everything from environmental law to
8 government contracts to personnel issues. The whole
9 gamut of issues that a commander graduating from the
10 War College is likely to face when they go back out to
11 the operational Air Force.

12 Q So something sort of similar, the basic
13 officer course or whatever or commander, about to take
14 command, they need to know --

15 A I'm familiar with the course. It's
16 comparable.

17 Q Okay. From that you were the deputy
18 commandant at the Air Force JAG school, what years were
19 they?

20 A That would have been from the summer of
21 2000 until the summer of, or until the summer of 2003.

1 Q And you moved from that job, you were the
2 interim commandant?

3 A During that period.

4 Q So you were the interim commandant and went
5 back to the deputy commandant?

6 A Basically the last four months I was in
7 charge of the sexual assault investigation of the Air
8 Force academies. My last four months, my fitness
9 report it shows my title is deputy commandant. Really
10 the last four months I spent heading the investigation
11 of the Air Force academy.

12 Q That was a special assignment?

13 A Correct, when I came back, I moved to the
14 director of Air Force Legal Information Services.

15 Q And Air Force Legal Information Services as
16 I understand is kind of like you manage all of the Air
17 Force's legal technology, essentially so Lexis law
18 LexisNexis, that sort of thing?

19 A Yeah, primarily. It's the DoD executive
20 agent for online legal research, I would say the bulk
21 of our mission was Air Force specific.

1 Q Were you, at this point you were a
2 battalion Colonel or Colonel?

3 A Colonel.

4 Q So from the Air Force Legal Information
5 Services job, you went on -- you were asked to be the
6 chief prosecutor for the Office of Military
7 Commissions?

8 A No, I had one more assignment.

9 Q Sorry. Go ahead.

10 A I left Legal Information Services in
11 February of 2005 and became a staff judge advocate for
12 the 20th air wing at Epi One Air Force.

13 Q What was the commission at the 20th?

14 A Air Force.

15 Q What was the 20th Air Force's commission?

16 A The 20th Air Force is the intermediate
17 command that's responsible for the nation's
18 intercontinental ballistic missiles.

19 Q During these last few assignments, I don't
20 think I asked this before, when you were the deputy
21 commandant and Legal Information Services?

1 A Right.

2 Q Chief of Air Force Legal Informations
3 Services --

4 A Right.

5 Q -- were you teaching in the area of
6 national security?

7 A No.

8 Q Were you -- did you attend any, did you get
9 any training or courses or any other, have any other
10 opportunities where you were studying the area of
11 national security law?

12 A Again, just the general type of the Air
13 Force puts on different courses throughout the year.
14 There would be blocks of instruction that would be
15 national security related, but.

16 Q And you said, did you say ICBM the 20th Air
17 Wing?

18 A Yes.

19 Q What does ICBM?

20 A It's the Intercontinental Ballistic
21 Missiles. The nation's nuclear missile force.

1 Q And at that job you had a fairly high level
2 clearance; is that correct?

3 A Yes.

4 Q Because your commander, 20th Air Wing, was
5 sort of in charge of all the planes that carried this
6 type of --

7 A Strictly the missiles.

8 Q Strictly the missiles?

9 A Yes.

10 Q Not even the airplanes, just you guys sort
11 of had the missiles there?

12 A The nuclear aircraft-borne nuclear weapons
13 would have been a different command.

14 Q Okay. When you were there, you had, you
15 had TSCI clearance but you weren't teaching in the
16 areas of national security law?

17 A That's correct.

18 Q You weren't taking any additional course on
19 the side or whatever?

20 A No.

21 Q Your clearance, at that point, was really

1 so that because obviously weapons, those types of
2 weapons are sensitive, and you were advising the
3 commander that was in charge of essentially storing
4 those weapons, you need to have sort of a clearance at
5 that point?

6 A Yes.

7 Q All right. At this point this is '05?

8 A February of '05.

9 Q February of '05 you went over to be the
10 chief prosecutor at the Office of Military Commissions?

11 A No.

12 February of '05 is when I went to F.E.
13 Warren Air Force Base in Cheyenne, Wyoming. It was
14 August of '05 is when I moved to Washington to become
15 the chief prosecutor.

16 Q Okay. All right. So now you're at, you're
17 at JTF-GTMO?

18 A Yes.

19 Q And at this point you still, you weren't
20 teaching in the area of national security law?

21 A Not teaching as an official duty. Invited

1 to speak, like at the Army JAG school or other
2 professional conferences about Guantanamo and the
3 military --

4 Q But I'm saying in '05 at least, so prior to
5 and up -- and taking the job at Guantanamo, you really
6 had no experience with national security law to the
7 extent, other than your sort of general military
8 career?

9 A Correct, yes, correct.

10 Q And when you were at Guantanamo, you were
11 there from '05 to '07?

12 A Correct.

13 Q Did you obtain any additional degrees in
14 national security law?

15 A No.

16 Q And, I assume you were a fairly busy guy,
17 not a lot of time for traditional travel I assume, not
18 related to the job?

19 A There was some, again, occasionally we were
20 invited -- there were a number of times that the chief
21 defense counsel and I would go out together to speak

1 about, basically about Guantanamo and the military
2 commissions. At the time it was Colonel Dwight
3 Sullivan was the chief defense counsel. I specifically
4 recall going to the Army JAG school and the two of us
5 spoke there to the grad course about Guantanamo and the
6 military commission.

7 Q But this was related to sort of your role
8 as chief prosecutor and chief defense counsel at
9 Guantanamo. This wasn't related to national security
10 law, the classification of information, you know, title
11 authorities, Title 50 authorities. Anything like that?

12 A We certainly didn't discuss how information
13 is classified or declassified. But we generally, it
14 was for me at the time, I was the leading advocate for
15 the military commissions in Guantanamo so I started
16 with the historical, you know, how the laws were
17 developed and how we used military commissions
18 throughout our history.

19 So it did touch on Uniform Code of Military
20 Justice and Title 10. But military commissions were
21 authorized. So in that respect it did touch on Title

1 10 issues.

2 Q And so it sounds like you were sort of the
3 public face of the military at this point?

4 A Yes, yes.

5 Q And certainly were you sort of asked by
6 your superiors to be the public face for the military
7 commissions at this point?

8 A Yes.

9 Q To sort of, I don't know, to talk up the
10 protections afforded to the detainees and that sort of
11 thing, the work you guys were doing there?

12 A Yes.

13 Q Now, from '05 to '07 you were the chief
14 prosecutor, you did not, at that time, you were not the
15 legal adviser to enter a prosecution?

16 A Correct.

17 Q Had you received training on how to
18 properly mark classified information?

19 A Yes.

20 Q Describe that training.

21 A It was the standard, you know, in brief we

1 got, we got read into the programs I had access to, the
2 chief prosecutor and proper marking and handling and
3 distribution of information that's classified at that
4 level.

5 Q But you never received training on the
6 duties, responsibilities or standards for revision of
7 classification?

8 A It was certainly a topic of discussion
9 because, again, one of our primary difficulties was in
10 getting the information declassified and often that
11 meant trying to figure out who the original
12 classification authority, I think as you and I
13 discussed yesterday -- we would submit information to
14 be declassified to (inaudible) who was responsible for
15 Guantanamo and six months later get a response back
16 from Central Command.

17 So the whole process of who had the
18 authority to classify and declassify -- I mean, my
19 primary focus was on the declassification, not the
20 original classification.

21 Q But your focus, when you were going through

1 that process was, how do I get information intelligence
2 reporting, et cetera. How do I get out of this so I
3 could use the military commission, how do I get this
4 declassified by the proper authority?

5 A Correct.

6 Q So you weren't necessarily, you know, going
7 through the executive order and saying, all right, this
8 is, should be classified because this says -- you were
9 really just saying here's a packet, here's the evidence
10 I want and here are the reasons I want to use it and
11 here's the OCA I think is the right guy but if I'm
12 wrong, please send that to the next OCA?

13 A There were times we would sit down with the
14 executive order and try to make the case for why it
15 made no sense for this particular piece of information
16 to be classified.

17 One of the fundamental problems is
18 everything is presumptively classified and getting it
19 back out of that wicket is difficult.

20 There were times when we sat down and tried
21 to go through the classification process to see why

1 this particular piece of information didn't fit,
2 shouldn't be classified to begin with.

3 Q When you were the -- other than your time
4 sort of traveling with Colonel Sullivan to various
5 conferences, whatever, to the Army JAG school and you
6 were discussing the military commission's programs, you
7 weren't otherwise speaking in the areas of national
8 security generally?

9 A Correct. National security is really a
10 field that developed after 2001. I don't think any law
11 school had a program in national security law until
12 after 2001 and now virtually every law school does.
13 It's been a product of the last dozen years.

14 Q Now, you received training on how to
15 properly mark classified documents. Did you ever
16 receive training on derivative classification?

17 A Yes, obviously everything, you know,
18 everything we dealt with is classified. So any notes
19 or anything that we prepared were classified or
20 whatever the highest level of information, any internal
21 documents that we generate within my office would have

1 been classified at the highest level of the information
2 that it was based on.

3 Q And was this, this is like PowerPoint
4 slides, you know, click, click, click type of thing.

5 A It could have been that, more often than
6 not it was some time of narrative analysis, assessment.

7 I mean, part of our job was to cull through
8 the information with the assistance of the criminal
9 investigation task force, Ft. Belvoir, collate the
10 information and try to make an informed decision on
11 whether there was sufficient, reliable information in
12 order to file war crimes charges against a detainee.

13 In the early days we had to submit, every
14 case that was charged had to go to the president and
15 the president had to personally sign a memo called a
16 reasonable to believe determination, RTB.

17 We had to put together a package to go
18 through the Department of Defense, CIA, Department of
19 Justice to the White House counsel who got the
20 president's signature who had to personally sign saying
21 there was reason to believe this detainee was a member

1 of support of al-Qaeda and was before prosecution for
2 military commission.

3 Everything that was prepared for those
4 documents would have been classified at the highest
5 level of the information that was used to generate it.

6 Q This process, this was sort of, endpoint --
7 your experience with this process was '05 to '07?

8 A Well, at that particular RTB process would
9 have been '05 to '06 when the Supreme Court came out
10 with Rumsfeld and ended the military war. And the new
11 process that would require the president to do a
12 reasonable to believe determination.

13 Q You've never been an original
14 classification?

15 A I have not.

16 Q You've never worked as an intelligence
17 analyst?

18 A I have not.

19 Q You have not worked as an interrogator?

20 A I have not.

21 Q Aside from your time at JTF-GTMO from '05

1 to '07, you really never worked with the intelligence
2 community?

3 A I would always add in my capacity of
4 congressional research service, my division is
5 responsible for advising both the HICY and SICY. The
6 House and Senate Intelligence Committees.

7 Q But you would agree those are the
8 legislative branch?

9 A Right.

10 Q Not the intelligence community and
11 executive branch. Oversight agencies, that sort of
12 thing?

13 A Right, although Congress did have an
14 oversight responsibility in the intelligence arena.

15 Q But the congressional research was, the
16 mission there was really to prepare research materials
17 for any number of committees and what committees
18 exactly were you responsible for?

19 A Primarily my division was responsible for
20 the House and Senate Armed Services Committee. The
21 House and Senate Special Select Committees on

1 Intelligence.

2 And then the trade part advised the
3 subcommittees on the banking committees on, anything
4 that was domestic financial issues are were handled by
5 a different division. International financial issues
6 ran by my division and then the Foreign Affairs
7 Committee Senate and Foreign Relations Committee of the
8 House.

9 Q How long were you at the CRS?

10 A From December of 2008 to December of 2009.

11 Q So about a year?

12 A Yes.

13 Q After that though, after that you really
14 haven't, between '05 and '07 and your job at CRS, at
15 least --

16 A Yes.

17 Q -- I don't want to put words in your
18 mouth, but you really have no experience working with
19 or in the intelligence community?

20 A Correct.

21 Q And you were never an intelligence officer

1 for the Air Force?

2 A No.

3 Q At any time.

4 Have you testified as an expert before?

5 A No.

6 Q So you've never testified as an expert in
7 national security law?

8 A No.

9 Q You've never testified as an expert in
10 detainee policy?

11 A Only before Congress.

12 Q Now, I heard Mr. Coombs use the word you
13 were an expert commentator. How does someone become an
14 expert commentator for TV's shows?

15 A I guess by, I wrote a number of articles
16 for newspapers and journals and speaking engagements
17 where over the course of doing that and journalists.
18 And then issues from the drone policy to the Snowden
19 case to the Guantanamo and the military commissions.
20 From time to time I get calls and invited to get on
21 there and comment on --

1 Q And that's because you've been sort of
2 fairly outspoken about your views on detainee policy,
3 the administration's response or lack thereof to GTMO
4 or whatever?

5 A I assume generally. For example, after
6 Osama Bin Laden was killed I was on Piers Morgan's show
7 with Alan Dershowitz where we debated the efficacy of
8 torture. How I get contacted I'm not really sure. I
9 get calls from time to time and invited to come on
10 different shows and talk about national security
11 related matters.

12 Q Well, you're fairly, you've written a
13 number of articles on GTMO related detainee policy.
14 You've written some opinions or editorials for various
15 newspapers; is that correct?

16 A Correct.

17 Q And those editorials have taken a position
18 on Guantanamo and made an argument essentially?

19 A Correct.

20 Q And you've, you know, you've got a Twitter
21 account?

1 A Yes.

2 Q You use Twitter fairly frequently?

3 A I do.

4 Q You make your views pretty well-known on
5 Twitter?

6 A Yes.

7 Q People follow you and you talk about GTMO
8 and you talk about issues of personal and professional
9 interest to you?

10 A Correct.

11 Q So maybe, would you say maybe that's the
12 reason generally people come to you for expert
13 commentary?

14 A I would assume in some cases, it is.

15 Q Now, I may have already asked this but you
16 didn't advise in an original classification when you
17 were at JTF-GTMO; is that correct?

18 A Yeah, I was never assigned to JTF-GTMO.

19 Q Right. You were in the Office of Military
20 Commissions?

21 A Correct.

1 Q And again for the court's benefit, let's
2 talk about the structure at GTMO.

3 A Uh-huh.

4 Q You had the Office of Military Commissions?

5 A Correct.

6 Q When I say GTMO, I'm talking about sort of
7 the detention operation, the military commissions
8 operation. I just want to make sure that all the lines
9 are separate.

10 A At GTMO there's the permanent party at the
11 naval base which is a separate operation under Southern
12 Command.

13 Q And that's commanded by a one star Navy
14 admirable or general, any two star?

15 A I think it's 06.

16 Q The commandant?

17 A The commander at the naval base. You've
18 got a big house. I think the JTC commander got it by
19 virtue of rank. So the naval base is the 06.

20 Q So you have the Guantanamo naval base?

21 A Yes.

1 Q But that's separate from JTF-GTMO?

2 A Yes, it's a separate command.

3 Q Okay. Let's talk about the JTF-GTMO.

4 A Okay.

5 Q That's headed by a flag officer?

6 A Correct.

7 Q Under the flag officer is like an 06 level
8 personal?

9 A At least in my experience. The med group
10 commander and detention group command certificate 06
11 and the intelligence is civilian.

12 Q So there are subordinate commanders under
13 the JTF-GTMO command?

14 A Correct.

15 Q And the office of military commissions was
16 not at JTF-GTMO?

17 A Correct.

18 Q It was located in Crystal City or Rosslyn,
19 somewhere in the suburbs of Virginia?

20 A Correct. JTF-GTMO.

21 Q What was your chain of command?

1 A That was a subject of dispute.

2 Q I've read your oral history, I'll let you
3 explain it.

4 A It was never clear what the chain of
5 command was. I had people who would ask you, who is
6 your boss. I would say I have no idea. Because it was
7 never, there was never a clearly delineated chain of
8 command until October of 2007.

9 Q So you really didn't know who you were
10 reporting to necessarily until really when you left?

11 A Right.

12 Q And you were obviously the chief prosecutor
13 so you were supervising the group of attorneys, right?
14 Groups of attorneys and some other SIDIFS?

15 A Like I said, I was supervising --

16 Q Who were you supervising?

17 A Like I said, it grew over time. By the
18 time I left it was roughly 120 personnel, which
19 included JAGs, DoD civilian attorneys, Department of
20 Justice attorneys, analysts and personnel from the
21 different intelligence agencies, the FBI, SIDIF, the

1 NSA. There was pretty much any agency that had an
2 interest in Guantanamo and the detainees and their
3 treatment and prosecution part of the task force.

4 Q But the task force now you're referring to
5 the OMC task force?

6 A Yes.

7 Q But --

8 THE COURT: Yes.

9 MR. COOMBS: Your Honor, I don't know if
10 we're still on foundation for his expertise. Seems
11 like we're getting far afield so I would object to
12 relevance and for this.

13 THE COURT: I'm going to overrule that.
14 You're still on foundation.

15 MR. MORROW: I'm still on foundation. I'm
16 trying to address national security law and the GTMO
17 detainee policy question sort of at the same time and
18 probably mixing a little bit.

19 THE COURT: I'm going to let him have some
20 latitude.

21 BY MR. MORROW:

1 Q So you supervised a group of task force,
2 the --

3 A The prosecution task force, PTF.

4 Q And again you weren't really involved in
5 the chain of command or in the daily operations of
6 JTF-GTMO?

7 A Correct.

8 Q Now, you had access to some materials
9 produced by, for the commander of JT-GTMO?

10 A Yes.

11 Q Some of those materials were the detainee
12 assessments?

13 A Correct.

14 Q And detainee assessments were called -- you
15 called them baseball cards?

16 A Again, that was a term that existed before
17 I got there and that was one I adopted.

18 Q We'll get into sort of baseball cards
19 later. But you didn't find these detainee assessments
20 very useful from your prosecutorial standpoint?

21 A Correct.

1 Q And that was because sometimes you found,
2 when you reviewed the underlying source information,
3 that was, sometimes when you compared that to the
4 detainee assessment itself, it was inaccurate?

5 A Correct.

6 Q Sometimes it was on the mark, but sometimes
7 it was inaccurate?

8 A Correct.

9 Q But your real interest was not using the
10 detainee assessment. Your interest was in the raw
11 intelligence reports contributed to the attempts --

12 A Correct.

13 Q That was because you wanted to get the
14 evidence that, the underlying evidence that contributed
15 to the detainee assessment declassified so they could
16 use in prosecutions?

17 A Correct.

18 Q And really the detainee assessments were
19 not -- they weren't produced for the prosecution?

20 A Correct.

21 Q They were produced for separate

1 administrative processes?

2 A Correct.

3 Q Or they were produced for senior officials?

4 A Correct.

5 Q Because they were sort of like an executive
6 summary?

7 A Correct.

8 Q So aside from -- the way I understand it,
9 and let me -- I'll just explore this, you tell me if
10 I'm wrong. But the detainee assessments was part of
11 the case file that would come to you?

12 A Yes.

13 Q And that case file is put together by the
14 criminal investigations task force?

15 A It was primarily by the individual
16 prosecutor. We had more cases than we had prosecutors.
17 So each attorney that -- prosecutor that worked for me
18 juggled, you know, three, four, five, six cases. Each
19 had their own methodology for how they assembled a case
20 file.

21 But invariably each case file included the

1 detainee assessment brief. There was no coherent plan
2 for how it had to be assembled.

3 Q The case file contained the detainee
4 assessment brief?

5 A Yes.

6 Q It contained the raw reporting?

7 A Yes.

8 Q So IIRs?

9 A Uh-huh.

10 Q Other intelligence reporting so IIRs being
11 information intelligence reports?

12 A Right.

13 Q Other law reporting, maybe some signals
14 intelligence?

15 A Yes.

16 Q HUMINT intelligence?

17 A Yes.

18 Q All the other stuff that would contribute
19 to the detainee assessment?

20 A Correct.

21 Q Really once you had all that stuff, you

1 were more interested in sort of the underlying evidence
2 rather than detainee assessments?

3 A Correct.

4 Q Although it came to you as part of the
5 packet, it wasn't really, you weren't looking for the X
6 sum, you were looking for the specifics?

7 A Yeah, the detainee assessment had no
8 evidentiary value. It was the underlying information
9 that would have substantive value.

10 Q Right. Evidentiary value relating to
11 prosecution of somebody in a military commission?

12 A Correct.

13 Q Give me one second, sir.

14 And you didn't -- as you testified earlier,
15 the detainee assessments were produced by the Joint
16 Intelligence Group?

17 A Correct.

18 Q And you had no supervisory authority over
19 the Joint Intelligence Group?

20 A I did not.

21 Q You didn't supervise their work product?

1 A I did not.

2 Q You did not contribute to the work product?

3 A I did not.

4 Q And none of the other prosecutors to your
5 knowledge contributed to their work product?

6 Well, you sound like you want to say
7 something, go ahead.

8 A We had involvement with respect to the high
9 value detainee assessment but not the general detainee
10 population.

11 Q Now, you had involvement in drafting and
12 detaining the detainee assessment briefs?

13 A On the high value detainee assessments not
14 the general detainee population.

15 Q Why for the high value detainees would you
16 be involved in the creation of the detainee assessment
17 briefs themselves?

18 I don't want you -- if it's classified then
19 I don't want you to answer, but.

20 A That's what I'm trying to --

21 Q Let's move on from that question. I don't

1 need to know that.

2 A Okay.

3 Q Now, you left the office as chief
4 prosecutor in '07; is that correct?

5 A Correct.

6 Q Until you were sort of contacted for this
7 case, you hadn't seen a detainee assessment in six or
8 seven years?

9 A Right.

10 Q You didn't work with detainee assessments
11 after your time at GTMO?

12 A Correct.

13 Q And you have not worked with classified
14 material since you left GTMO?

15 A Other than --

16 Q Other than what?

17 A At CRS I had the TSSCI is read into the
18 special access program there.

19 Q As part of the Congressional Oversight
20 Commission?

21 A Correct. But that would have ended, I

1 guess I got read out of those programs in January of
2 2010.

3 Q So you had some experience with classified
4 material but from '08 essentially when you left CRS --

5 A 2010 is when I left CRS.

6 Q You left CRS in 2010?

7 A Yes.

8 Q But since then you've had no really -- you
9 haven't had a security clearance?

10 A Correct.

11 Q You have not, again, dealt with classified
12 information in any way?

13 A Correct.

14 Q And you, other than sort of your speaking
15 engagements with relation to GTMO, you haven't
16 necessarily been involved in approving policy, detainee
17 policy for GTMO?

18 A Correct.

19 Q You met with the Obama transition team in
20 late 2008?

21 A Correct.

1 Q And they asked you some questions
2 essentially about their job -- well, they approached
3 you because you had been the chief prosecutor in '07?

4 A Right.

5 Q And they were sort of trying to get their
6 mind wrapped around the issue of GTMO?

7 A Correct.

8 Q And as part of that, they were sort of
9 shocked that everything didn't come in sort of the
10 nice, neat detainee file?

11 A Yes.

12 Q So you sort of schooled them on, like, hey,
13 information is everywhere, it's sort of disorganized,
14 you need to get the information in one place?

15 A Correct.

16 Q Now that meeting -- you were not asked to
17 be part of the Guantanamo review task force?

18 A Correct.

19 Q What is that?

20 A It was a group appointed on January 22nd,
21 2010 by President Obama, it was led by Matt Olsen. At

1 the time he was with the Justice Department. He's been
2 the director of the National Counterterrorism Center.

3 It was a group assigned to basically do
4 what I just mentioned, to try to collect up all the
5 bits and pieces of information from various sources and
6 do a reassessment of all of the detainees.

7 At the time there were 240 at Guantanamo.

8 But to do their own assessment of the
9 detainees and come to a conclusion or recommendations
10 on the ones that should be transferred out, prosecuted
11 or indefinitely detained.

12 Q But that GRTF -- that process and that was
13 in response to an executive order from President Obama?

14 A Yes.

15 Q You were not asked to be part of that GRTF?

16 A I was not.

17 Q You did not have advice relative to the
18 GRTF, it issued a report a year later?

19 A Exactly one January 22nd, 2010.

20 Q President Obama is, like, you guys have a
21 year to figure this out and they took a year and issued

1 a report?

2 A Correct.

3 Q And you were not part of the drafting of
4 that report?

5 A I was not.

6 Q You didn't provide any advice to the
7 drafters of that report?

8 A Other than, again, the meeting in November,
9 December, 2008, some of the people I met with were part
10 of the task force.

11 Q But that meeting was prior to the
12 implementation of the GRTF altogether, but at this time
13 we're still at the transition?

14 A Yes.

15 Q President Obama wasn't the president yet.
16 It was a transition?

17 A Uh-huh.

18 Q So you weren't involved in that GRTF
19 process?

20 A That's correct.

21 Q And GRTF was set out to, hey, we have got

1 to figure out what to do with these detainees, are we
2 going to prosecute them in military commissions,
3 Federal Court, are we going to transfer them to another
4 country, are we going to hold them --

5 A Indefinitely.

6 Q -- indefinitely?

7 A Yes.

8 Q And again, but you weren't involved in that
9 sort of process?

10 A That's correct.

11 Q You mentioned that you teach now a course
12 for national security law at Howard?

13 A Yes.

14 Q And correct me if I'm wrong but I believe
15 you told me that you just started teaching that course?

16 A Yes, last fall semester.

17 Q And so you've now taught two semesters of
18 that course?

19 A Just one.

20 Q Just one semester?

21 A Yes.

1 Q And who do you teach in that course?

2 A It's second and third year law students.

3 Q Are you required to publish as part of your
4 teaching at Howard?

5 A I'm not required to, certainly --

6 Q Publish or perish?

7 A It's viewed favorably.

8 Q But you have not, at this point, published
9 any articles on national security law after taking this
10 position as a teacher in national security?

11 A I've obviously done some opinion pieces.

12 Q Right.

13 A I have one that's posted on SSRN, Social
14 Science Research Network, a draft that I haven't
15 completed and submitted for publication.

16 Q Are you currently working on any research
17 projects related to national security?

18 A I was hoping over the summer to finish my
19 research -- I did an article on how the, our policies
20 post 9/11 undermined international humanitarian law.
21 So I'm doing research and writing on that.

1 Q One moment, sir.

2 MR. MORROW: Your Honor, we would maintain
3 our objection to -- obviously Colonel Davis has had a
4 lengthy and distinguished career in the Air Force but
5 we object to his qualifications as an expert in
6 national security law and JTF-GTMO detainee policy and
7 the info used in their detention, specifically the
8 detainees' detention.

9 THE COURT: Do you want to ask anymore
10 questions, Mr. Coombs?

11 MR. COOMBS: Your Honor, I'd simply state
12 that the defense believes they're very similar to -- we
13 state he qualifies as an expert.

14 SPEAKER 4: You're going to his opinion on
15 what, if I shall allow you to do that, if I accept him
16 as an expert.

17 MR. COOMBS: Yes, Your Honor.

18 SPEAKER 4: You're going to ask him his
19 opinion on?

20 MR. COOMBS: As I said, I'm going to
21 qualify him as a national security expert if you accept

1 him as that and then his opinion on the detainee
2 assessment briefs. He reviewed the detainee assessment
3 briefs. He compared the detainee assessment briefs
4 that are charged in specification 9 of charge 2 with
5 open source information and he'll give an opinion with
6 regards to whether or not that information could be
7 used to harm the United States.

8 The defense's position is that he clearly
9 meets the requirements for MRE702. As he indicated
10 he's been the assistant director, the senior specialist
11 for national security for the Congressional Research
12 Service.

13 He teaches national security law currently
14 at Howard University School of Law.

15 He's written several articles on national
16 security and the detention facility at Guantanamo.

17 He served as an expert commentator on
18 national security for multiple news organizations.

19 He's given numerous speeches on national
20 security.

21 He was requested to advise President

1 Obama's transition team on Guantanamo.

2 He's testified before Congress on matters
3 related to Guantanamo.

4 As the chief prosecutor reviewed and dealt
5 with the detainee assessment briefs.

6 He participated in substantive discussions
7 on the detainees at Guantanamo and what should be done
8 with them.

9 And he's dealt extensively with
10 declassifying information involved with the detainees
11 at Guantanamo.

12 THE COURT: Mr. Davis, I have a couple of
13 questions for you.

14 EXAMINATION BY THE COURT:

15 Q If you were to offer an opinion on whether
16 disclosure of the DABs would be potentially damaging to
17 the United States or might be useful to an enemy of the
18 United States, what criteria would you use?

19 A It would be taking the information in the
20 detainee assessment briefs and comparing with
21 information that's available, primarily published by

1 the government, the public source information and
2 matching the substantive content of both documents, if
3 the information is available in the public domain.

4 Q Have you viewed the charged DABs at issue?

5 A Yes.

6 Q Are they similar to the DABs that you
7 reviewed and were familiar with in your time as a chief
8 prosecutor?

9 A Yes.

10 THE COURT: Based on the witness'
11 familiarity with the DABs I will accept the second
12 basis that you were expertise -- the familiarity with
13 GTMO detainee policy information used in detention,
14 specifically DABs. But I'm not going to go for the
15 broad national security expertise.

16 So if you're narrowly tailoring your
17 questions with respect to the DABs, he can answer those
18 with that expertise.

19 MR. COOMBS: Point of clarification then,
20 Your Honor, would the court allow him to testify to his
21 opinion regarding once he's compared the DABs with open

1 source information and information that's been released
2 by the government as to whether or not it could damage
3 national security?

4 THE COURT: I will let him do that. The
5 cross-examination and the experience and the foundation
6 goes to the weight. Go ahead.

7 MR. COOMBS: Yes, Your Honor.

8 Well at this point I qualify him as an
9 expert. So if the court wishes we can continue or
10 break for the day?

11 THE COURT: What are we anticipating for
12 length?

13 MR. COOMBS: Probably another hour, hour
14 and a half.

15 THE COURT: Government, do you want -- is
16 this a good time to break or continue on?

17 MR. MORROW: We would like to break.

18 THE COURT: Same thing?

19 MR. COOMBS: That's fine, Your Honor.

20 THE COURT: Why don't we go ahead, 0930
21 tomorrow.

1 MR. COOMBS: Yes, Your Honor.

2 MR. MORROW: Yes, ma'am.

3 THE COURT: Court is in recess until 0930.

4 I'd like to see both parties before we break for the
5 evening.

6 (Court adjourned.)

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